

ALEXANDER CROSS.

FEBRUARY 3, 1859.—Committed to a Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

The Court of Claims respectfully presents the following documents as the report in the case of

ALEXANDER CROSS *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Two statements of the claimant's account, with and without interest, and papers relating thereto, marked A B C, transmitted to the House of Representatives.
3. Agreement between United States Solicitor and claimant's counsel relating to papers therein named, and numbered from 1 to 6, inclusive, transmitted to the House of Representatives.
4. Consent of United States Solicitor as to the manner of taking testimony and depositions taken in the case, and numbered from 1 to 11, transmitted to the House of Representatives.
5. Certified documents from the Treasury Department, with an additional letter from the Secretary of the Treasury, and other letters relating to the case, transmitted to the House of Representatives.
6. Claimant's brief.
7. Opinions of each of the Judges of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of February,  
[L. S.] A. D. 1859.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

## UNITED STATES COURT OF CLAIMS.

*To the honorable the Judges of the Court of Claims :*

Your petitioner, Alexander Cross, a citizen of the United Kingdom of Great Britain and Ireland, and now residing at San Francisco, in the State of California, respectfully represents and states : That on the 28th of April, A. D. 1849, one Daniel Saffarans, of the State of Tennessee, entered into an article of agreement with James Collier, the collector of the port of San Francisco, in the State of California, by which the said Saffarans covenanted that he would well and substantially erect, build, and finish a store or building in said San Francisco, of the dimensions and description following, viz : the store to be four stories high, twenty-five feet wide, and one hundred feet long, to be constructed of stone and brick, so far as may be necessary to make it strictly fire-proof, and to be built in the strongest and most approved manner—the site of the building to be selected by the said collector—and to be finished and erected ready for occupancy by the 1st of September, A. D. 1850 ; the store, when finished, approved, and accepted by the collector, to be rented to the United States for the term of fifteen years, the rent per annum to be determined upon and fixed by the collector at the time said store should be erected, and received by said collector. For a more particular knowledge of the contents of said article of agreement, reference is here had to a copy thereof, which is hereunto annexed, and marked “Exhibit No. 1.”

On the 8th day of May, A. D. 1849, the abovementioned article of agreement, with certain reservations and conditions, was approved of by W. M. Meredith, the then Secretary of the Treasury, one of which was, that the rate of rent to be paid for the building to be agreed upon by the collector should be subject to the express approval of the Secretary of the Treasury ; a true copy of which approval of said articles of agreement is hereto annexed, marked “Exhibit No. 2.”

That the said Daniel Saffarans being without the means necessary to carry said contract into effect, and in order to procure the same, did, on the 17th of May, A. D. 1849, by his power of attorney of that date, fully authorize one George N. Sanders, of the city of New York, to negotiate a loan or loans of money with any person or persons in the United States of America or elsewhere, for the purpose of fulfilling and completing said contract ; a true copy of which power is hereto annexed, marked “Exhibit No. 3.”

That, under and in virtue of said power of attorney, said Sanders, on the 9th of January, A. D. 1850, entered into a contract of that date with your petitioner, who was then the head of a commercial house in Glasgow, Scotland, and of another commercial house in San Francisco, California, by which your petitioner undertook that said commercial houses should attend to the carrying out of said Saffarans' said contract, for and in his behalf, and should advance the capital necessary, in Europe and California, to the extent of fifty thousand dollars, at a rate of interest, and to be reimbursed in the manner



therein provided, with various other provisions and covenants which it is not deemed necessary to specify, inasmuch as will be hereinafter stated, your petitioner, in order to secure himself for his advances, was subsequently obliged to purchase in, and take an assignment of, the entire interest of said Saffarans in said contract and of the building erected under it. A true copy of said contract between said Saffarans and your petitioner, made as above stated by said Sanders, as his attorney, on said 9th day of January, 1850, is hereto annexed, marked "Exhibit No. 4."

That, in compliance with his said contract with said Saffarans, your petitioner, through said commercial houses, advanced the necessary capital, and erected the building in all respects in conformity to the requirements of the contract of said Saffarans with said collector of the port of San Francisco, first herein above mentioned, and on the site selected by the said collector for said building.

And to do this, instead of fifty thousand, your petitioner found himself under the necessity of advancing the sum of one hundred thousand dollars or thereabouts.

When the building was completed and ready for the occupancy of the government, the then Secretary of the Treasury, (Thomas Corwin,) anticipating that the then high rates of rents in San Francisco could not be permanently maintained, was very desirous of procuring a change of that provision of the contract of the 28th of April, A. D. 1849, which bound the government to rent the building for the term of fifteen years. Yielding to the urgent solicitations of the Secretary of the Treasury in this particular, the said Daniel Saffarans reluctantly consented that the term of the lease should be reduced from fifteen years to ten. Accordingly, on the 11th of November, A. D. 1850, a supplemental contract was entered into by T. Butler King, the then collector of the port of San Francisco, of the one part, and said Saffarans of the other, in modification of, and to carry into effect, the said contract of said 28th of April, A. D. 1849. This last contract reduced the term of the lease to ten years, and fixed the rent at fifteen hundred dollars per month, payable monthly by the collector of San Francisco; a true copy of which said last named contract is hereunto annexed, marked "Exhibit No. 5."

This last contract was entered into by the said collector, T. Butler King, at the city of Washington, and was on the same day approved by the Secretary of the Treasury, on the express understanding and condition that the said T. Butler King, on his arrival at San Francisco, should first examine the warehouse and duly accept the same, as being substantially of the character, description, and dimensions required by the stipulations contained in said article of agreement of 28th April, A. D. 1849. Which said approval of said Secretary was endorsed on said supplemental contract, a true copy of which is hereunto annexed, marked "Exhibit No. 6."

The said T. Butler King, on his arrival at San Francisco, first examined the said warehouse, and then endorsed on said contract his acceptance of said building, to take effect as of the date of the 14th of January, 1851; a true copy of which acceptance is hereunto annexed, marked "Exhibit No. 7."

The contract with the government being thus fully completed, and the said Saffarans being wholly unable to reimburse the advances of capital made by your petitioner in the erection of the building, he was driven to the necessity of negotiating with said Saffarans for the purchase of his interest in the warehouse; and to effect this he was compelled to take the building and ground on which it stands at cost, and give to Saffarans a bonus or profit of twenty thousand dollars.

The preliminaries of a purchase being arranged, the said Saffarans, by his writing under his hand and seal, of the date of the 10th July, A. D. 1851, executed by him in the State of Tennessee, assigned and conveyed to your petitioner his said articles of agreement with the government of the United States, with all the rights, rents, and interests accrued, or to accrue, under and in virtue of the same. Which said assignment was by him transmitted to California to his son, Isaac Saffarans, with an endorsement on it stating that it was to be held as an escrow, and not to be valid until R. H. Crittenden, A. P. Sheldon, and said Isaac Saffarans should endorse upon it their approval. A true copy of which assignment and endorsement upon it is hereunto annexed, marked "Exhibit No. 8."

Said Saffarans, along with his assignment, transmitted to California a power of attorney of the same date, (viz: July 10, 1851,) authorizing Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon to deliver said assignment to your petitioner, with a power of substitution. A true copy of which power is hereto annexed, marked "Exhibit No. 9."

It so happened that said Crittenden and Sheldon had both left the State of California before the arrival and receipt there of said assignment; by reason whereof the said R. H. Crittenden, by his power of attorney, dated at New York, July 25, 1851, substituted as his attorney, under said original power, George W. Guthrie, of San Francisco, to act for him and in his stead and place. A true copy of which substituted power is hereto annexed, marked "Exhibit No. 10."

By virtue of said power of attorney and substituted power, the said Robert H. Crittenden, by his attorney, George W. Guthrie, and the said Isaac Saffarans, by and for himself, did, on the 15th of September, A. D. 1851, endorse on said assignment of said Daniel Saffarans their approval thereof.

And afterwards, on the 19th of November, A. D. 1851, the said A. P. Sheldon, by his substituted power, authorized Isaac Saffarans, B., of San Francisco, to endorse for him, as his attorney, his approval of said assignment, as will appear by a true copy of said last named substituted power of attorney, hereunto annexed, marked "Exhibit No. 11."

On the 6th of January, 1852, the said A. P. Sheldon, by his attorney, (the said Isaac Saffarans, B.,) endorsed on said assignment his approval thereof, whereby the said assignment became complete, and took effect as a transfer to your petitioner of the entire interest in said warehouse, together with all the rights, rents, and interests accrued, or to accrue, under and in virtue of said Daniel Saffarans' said contract with the United States; and your petitioner to the present time has remained, and does remain, the sole proprietor of the same.

The said assignment being thus completed, and having taken effect in law, the said Daniel Saffarans, by his attorney, Isaac Saffarans, B., by a note or memorandum in writing, endorsed on said contract with the government, addressed to the Hon. T. Butler King, collector of the port of San Francisco, requested that all back and future rents arising under the contract might be paid to said Alexander Cross. A true copy of which note of request is hereto annexed, marked "Exhibit No. 12."

And your petitioner states that said collector of said port of San Francisco was, immediately after said assignment and written request, duly notified thereof, who, in conformity thereto, accepted and recognized your petitioner as the landlord of the government; and from the 14th of January, 1851, to the 14th of August, 1853, the rent of said warehouse was regularly paid monthly to your petitioner, in pursuance to said contract with the government.

On the 12th day of April, 1853, the Secretary of the Treasury, without any valid reason, and without any right to do so, issued instructions to Richard P. Hammond, the then collector of San Francisco, to abandon said warehouse, and to stop the payment of rent thereon. In pursuance to those instructions, the said Richard P. Hammond, as collector of said port, on the 4th of August, 1853, addressed a letter to your petitioner, advising him that in pursuance to instructions from the Secretary of the Treasury, he should, on the 13th of that month, abandon the building, and should pay no rent thereon after that date. A true copy of which letter is hereto annexed, marked "Exhibit No. 13."

On the 13th of the same month of August your petitioner addressed and delivered to said collector his written answer to said letter of the 4th, in which he informed the collector that he did not recognize the right of the Secretary of the Treasury to rescind said contract, and that he should claim payment of rent pursuant thereto until the expiration of the term for which the building was leased. A true copy of which letter is hereto annexed, marked "Exhibit No. 14."

That said collector, in pursuance to his said letter and of said instructions from the Secretary of the Treasury, did, on said 13th of August, 1853, abandon said building, and has ever since refused to occupy the same or pay rent thereon.

And your petitioner further states that he has spent more than three long years in unavailing efforts to induce the Secretary of the Treasury to revoke said instructions, and allow the arrears of rent to be paid, which the said Secretary has steadily refused, and still does refuse to do.

And your petitioner complains that he has been unjustly subjected to great and ruinous expense in sending agents from California to Washington city to lay his case and his claims before the Secretary of the Treasury; and the repudiation of said lease, by putting it out of his power to meet his engagements, has also brought upon him great and ruinous embarrassment in his business affairs.

That on the 14th of November, 1856, thirty-nine months had elapsed since the payment of any rent on said lease; and that the arrears of rent then and now due to your petitioner amount to the

sum of fifty-eight thousand five hundred dollars, besides the interest, which ought to be allowed thereon.

Your petitioner prays for such relief in the premises as under the circumstances of his case is just and right.

ALEXANDER CROSS,  
By S. F. VINTON,  
*His Counsel.*

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COPY OF EXHIBITS.

*No. 1.—Article of agreement made and concluded this 28th of April, 1849, by and between Daniel Saffarans, of the first part, and the United States of America, by James Collier, collector of the district of San Francisco, California, acting by the direction and authority of William M. Meredith, Secretary of the Treasury, of the second part.*

The said party of the first part, for the considerations hereinafter mentioned, doth for himself, his heirs, executors, and administrators, hereby covenant with the said party of the second part that he will well and substantially erect, build, and finish a store or building in said San Francisco, of the dimensions and description hereinafter mentioned, the whole subject to such modifications and alterations as the said collector of San Francisco shall require or approve, to wit: Said store to be four stories high, twenty-five feet wide, and one hundred feet long; to be constructed of iron and brick, so far as may be necessary to make them strictly fire-proof, and to be built in the strongest and most approved manner, the said collector reserving to himself the sole power and privilege of selecting the site or ground upon which said store or stores shall be erected. It is further understood that said collector is to lease said store or stores of said party of the first part for the term of fifteen years; the rent per annum to be determined upon and fixed by the collector at the time said store or stores shall be erected, and received by said collector.

And the said party of the first part doth further covenant that he will erect and finish said store in such manner as the said collector shall require or approve, so that the said store shall be ready for occupancy on or before the first day of September, eighteen hundred and fifty.

And the said party of the first part doth further covenant, that whenever the said store shall be erected and finished and ready for occupancy, to the acceptance of the said collector, he will lease, and he doth hereby lease said store to the said party of the second part, for a term commencing on the day when the said collector shall approve and accept of said store, and terminating on the expiration of the term aforesaid, to wit, fifteen years from the time they are received by said collector, upon the terms and conditions and for the rent hereinafter mentioned.

And the said party of the first part doth further covenant, that the

said store is free from all incumbrances, and that the United States shall not be liable for any lien upon said store during the term aforesaid, or any other claim of any nature whatsoever, except only the rent hereinafter stipulated; and that he will keep the said store in good and sufficient repair, injuries arising from the misconduct of officers of the government only excepted.

And the said party of the second part do hereby covenant with the said party of the first part, his heirs, executors, and administrators, that whenever the said store shall be ready for the occupancy to the acceptance of said collector, they will hire and lease of the said party of the first part the said store, upon the terms and conditions, and for the period hereinafter mentioned; that they will pay rent for said store at the rate of ——— dollars per annum, said rent to be paid quarterly, on the first of January, April, July, and October; and that the said rent on said store shall commence as soon as the same shall be ready for occupancy and accepted by the said collector as aforesaid.

And it is further agreed by the said parties of the first and second parts, that should the said store be destroyed or injured by fire, or the action of any of the elements, so that the same shall become untenable, the said party of the first part shall re-build and repair the same as soon as practicable, and the rent of said store shall cease and remain discontinued during all the time the occupancy of said store shall be interrupted or prevented from the causes aforesaid, or any other cause not arising from the act or default of the Secretary of the Treasury or the collector aforesaid.

In testimony whereof, the said parties to these presents, on the day and year first above written, have hereunto, and to two other copies of the same, interchangeably set their hands and seals—the said party of the first part, in person, and the United States, by James Collier, collector, acting as aforesaid; and Wm. M. Meredith, Secretary of the Treasury, in evidence of the authority aforesaid, and of his approval of the premises, has hereunto affixed his official signature.

DANIEL SAFFARANS. [SEAL.]  
JAMES COLLIER, [SEAL.]

*Collector of the district of Upper California.*

Signed, sealed, and delivered in presence of—

SAM'L S. WYLIE.  
N. HEADINGTON.

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*Exhibit No. 2.—Copy of approval of the Secretary of the Treasury.*

The foregoing articles of agreement are approved on the following express reservations and conditions only, to wit:

*First.* That wherever the name of James Collier, collector of the district of San Francisco, California, is mentioned, or where the words collector or said collector are used, they shall be deemed and understood to mean and apply to the collector of the district aforesaid in his official capacity for the time being.



*Second.* That this agreement is understood and intended to apply to the construction and renting of *one* store building only, and to no more, unless hereafter deemed necessary, and then rented with the approbation of the Secretary of the Treasury.

*Third.* The rate of rent to be paid for the building to be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury.

*Fourth.* The rent stipulated for to depend upon and be paid out of appropriations expressly made by Congress for the purpose, and from no other source, or according to the existing laws at the times of payment.

In testimony whereof, I, William M. Meredith, Secretary of the Treasury, have hereunto signed my name, and affixed the seal [L. S.] of the Treasury Department, this eighth day of May, in the year of our Lord one thousand eight hundred and forty-nine.

W. M. MEREDITH,  
*Secretary of the Treasury.*

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*Copy of Exhibit No. 3.*

Know all men by these presents that I, Daniel Saffarans, a resident of the State of Tennessee, have made, constituted, and appointed, and by these presents do make, constitute, and appoint George N. Sanders, of the city of New York, my true and lawful attorney, for me and in my name, place, and stead, for the purposes hereinafter mentioned.

Whereas, on the 28th of April, 1849, articles of agreement were made and concluded by and between me, of the first part, and James Collier, collector of the district of San Francisco, California, acting by the direction and authority of William M. Meredith, Secretary of the Treasury of the United States, of the second part, of which said articles of agreement a certified copy is hereunto annexed;

And whereas said articles of agreement require me to erect the store or building mentioned in said articles of agreement on or before the first day of September, A. D. 1850;

And whereas, in order to fulfil all the requirements of said articles of agreement on the part of the party of the first part, it is necessary that other parties should be interested in the contract made between the parties to said articles of agreement: Therefore I do appoint the said George N. Sanders my true and lawful attorney, with full powers to negotiate a loan or loans of money with any person or persons in the United States of America or elsewhere, for the purpose of completing and fulfilling the contract aforesaid; said attorney having by these presents full power and authority to associate with himself such person or persons as he may see fit, to carry out the object of the said agreement; such person or persons as he may select or agree with to have such share of the rents, issues, and profits to arise and grow out of the store or building to be erected as per said agreement, and are not to require the payment of interest on such sums as they may advance until such store or building has been taken possession of by



the United States government or its representative; and such rent to be paid for such store or building shall be appropriated as it is paid quarterly to the persons who may become interested in said agreement in proportion to their respective shares and interest therein, and as may be agreed upon between them and my attorney hereby appointed. And the said George N. Sanders, in consideration of the labor and trouble he may have in executing the powers herein contained, shall have and receive, and the same is hereby granted and given to him, one-sixth of the whole interest of the party of the first part in said article of agreement and the subject-matter thereof; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof

In witness whereof, I have hereunto set my hand and seal the seventeenth day of May, in the year one thousand eight hundred and forty-nine.

DANIEL SAFFARANS.

Sealed and delivered in presence of—

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*Copy of Exhibit No. 4.*

Articles of agreement made and entered into this ninth day of January, 1850, between Daniel Saffarans, of Tennessee, of the first part, and Alexander Cross, of Valparaiso, of the second part, witnesseth:

That whereas the party of the first part did enter into a contract on the 28th day of April, 1849, with the collector of the port of San Francisco (approved by the Secretary of the Treasury) for the construction of an iron warehouse, to be used as a government store in said port, on terms and conditions as will more fully appear by reference to said contract;

And whereas said party of the first part is desirous of associating with him some capitalist who will aid in carrying out said contract;

And whereas the said party of the second part is willing to unite with the said party of the first part in carrying out that object: Therefore, they have come to the following agreement, to wit:

*First.* The said Alexander Cross, as senior partner of the commercial houses of Cross, Wedderspoon & Co., of Glasgow, Scotland, and Cross, Hobson & Co., of San Francisco, Upper California, undertakes that they attend to the carrying out of said contract for and in behalf of the contractor; advancing the capital necessary, in Europe and California, to the extent of fifty thousand dollars, at the rate of ten per centum per annum for interest, risks, losses by exchange, and for services rendered not otherwise provided for; the same to be

reimbursed in three equal annual instalments, or in two, at the option of Mr. Saffarans, as may hereafter be found convenient to him.

*Second.* Cross agrees, on behalf of his Glasgow firm, to attend to the orders of said Saffarans, or his attorney in New York, in procuring the construction of one or more iron warehouses, in the best manner and on the best terms, and to forward the same with all speed to San Francisco, covering the same by the necessary insurance, their commission being limited to five per cent. on invoice; said orders to be accompanied by a remittance of one-sixth the approximate amount.

*Third.* Cross engages, on behalf of his San Francisco house, to make the necessary entries, pay the duty, and land said warehouses, and superintend in a general way their erection, previously buying or securing the necessary ground or site, with the corresponding approval of the collector of the custom-house, (as stipulated in contract,) their commission on said land and buildings being limited to five per cent.

*Fourth.* He further engages that his said California firm shall lease, on proper terms, the said warehouses to the collector, collect the rents at the proper times, and keep an account of the same; that they sell such spare lands as may not be required for the purposes of the contract; their commission agency in both cases being limited to five per cent.

*Fifth.* The interest or shares of this contract are declared by Saffarans to be divided into one hundred; of which Cross, as advancing capitalist, is assigned hereby twenty-seven and two-thirds shares, ( $27\frac{2}{3}$ .) the contractor representing seventy-two and one third shares, ( $72\frac{1}{3}$ .)

*Sixth.* The whole accounts to be kept and made up in San Francisco, the cost of grounds and erections being capitalized when completed, and proceeds of rents collected, or spare lands sold credited. Then yearly make up the same, and after setting aside and repaying to the advancers the stipulated annual instalments, account with the parties interested for surplus or deficiency.

*Seventh.* Saffarans agrees to extend to said Cross, Hobson & Co., of San Francisco, his full power of attorney as his sole agents in California respecting this contract, to be irrevocable and continued for at least two years, and until all the advances are liquidated; any change which the major part of those interested may deem necessary in the agency afterwards, Mr. Saffarans will be at liberty to make.

*Eighth.* Cross, on behalf of his California house, agrees to give the preference of such iron houses which they, meantime, have to their address, of a suitable character for this contract, on reasonable terms; more particularly one of two stories sent to Valparaiso, per Favorite, from London in July last, if not previously engaged, and Mr. Saffarans agrees to purchase such at the market price, which can hereafter be determined to his satisfaction.

It is further understood that said Saffarans is to pay one-sixth of the cost of the building herein referred to, or of any others that may be constructed under this contract, payable in three and six months from time of notice of contract for their construction. The money to be advanced by said Saffarans is to represent five and two-thirds shares, and to be refunded in same manner as the moneys advanced by said Cross, said five and two-thirds shares to be placed on precisely

the same footing of the twenty-seven and two-thirds shares of said Cross.

Witness the hands and seals of the parties the day and date above mentioned.

DANIEL SAFFARANS. [SEAL]

By his attorney, GEO. N. SANDERS. [SEAL.]

Witnesses:

ALFRED GILMORE.

A. J. OGLE.

SAMUEL B. HART.

*Explanatory note.*—The capital provided by advances, for present, is \$60,000, to the whole of which  $33\frac{1}{3}$  shares are assigned. To Cross, therefore, who puts \$50,000, corresponds  $27\frac{2}{3}$ ; and to Saffarans \$10,000,  $5\frac{2}{3}$ .

Ready cash is understood and is requisite for the purpose of the contract, both in Europe and in California, and should be provided so by Mr. Saffarans for his share, as per article; but if in negotiable paper, at three and six months, he to pay interest at 10 per cent. per annum. In case of any defection in either advancing parties, the shares will be hereafter modified on the above principle.

ALEX. CROSS.

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*Copy of Exhibit No. 5.*

Articles of agreement entered into this 11th day of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States government, of the first part, and Daniel Saffarans, of Tennessee, of the second part, witnesseth:

That whereas the party of the second part did, on the 28th day of April, 1849, enter into a contract with James Collier (then collector of the port of San Francisco) for the construction of an iron fire-proof warehouse, twenty five feet wide by one hundred feet deep, and four stories high, to be used for custom-house purposes at said port of San Francisco, under a lease to the government for the term of fifteen years, which said contract was approved by Wm. M. Meredith, (the Secretary of the Treasury,) on the 8th day of May, 1849, on conditions as expressed in said approval, and among others the following: "The rate of rent to be paid for the building to be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury;"

And whereas the party to the second part to this agreement, in fulfilment of his contract with the said James Collier, has erected an iron fire-proof warehouse in San Francisco, of the dimensions and quality as stipulated for;

And whereas said Collier, as collector, did, on the — day of —, contract with the party of the second part to this agreement to rent said warehouse for a term of fifteen years, at the rate of two thousand dollars per month, which said contract was sent on to Washington city for the approval of the Secretary of the Treasury;

And whereas, the present Secretary of the Treasury, deeming the rate of rent for the term of fifteen years to be unreasonable, has disapproved of said contract of the \_\_\_\_\_ day of \_\_\_\_\_; but the government of the United States being much in need of said iron warehouse, for custom-house purposes in San Francisco, and said Saffarans being willing to make some abatement in the terms agreed on in the contract entered into with the said Collier on the \_\_\_\_\_ day of \_\_\_\_\_, the parties to this agreement have concluded the following terms:

The party of the first hereby agrees to rent said warehouse from the party of the second part for the term of ten years, from the day possession shall be delivered to the present collector, at a rent of fifteen hundred dollars per month, payable monthly by the collector of San Francisco. And the party of the second part doth hereby further covenant that said store is free from all incumbrances, and that the United States shall not be liable for any lien upon said store during the term aforesaid, or any other claim of any nature whatsoever, except only the rent herein stipulated to be paid, and that he will keep said store in good and sufficient repair, injuries arising from the misconduct of the officers of the government only excepted.

And it is further agreed by the parties of the first and second part, that should said store be destroyed or injured by the action of any of the elements, so that the same shall become untenable, the said party of the second part shall rebuild or repair said store as soon as practicable, and the rent of said store shall cease and remain discontinued during all the time the occupancy shall be interrupted from the causes aforesaid, or any other cause not arising from the act or default of the officers of the government.

In testimony whereof, the parties to this agreement have respectively hereunto set their hands and affixed their seals the day and year before written.

T. BUTLER KING, [SEAL.]  
*Collector of the port of San Francisco.*  
 DANIEL SAFFARANS. [SEAL.]

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*Copy of Exhibit No. 6.*

The foregoing articles of agreement are approved upon the following express understanding and conditions, that is to say:

That the collector, T. Butler King, esq., upon his arrival at San Francisco, shall first examine the warehouse in question, and duly accept the same as being substantially of the character, description, and dimensions required by the stipulations contained in the former articles of agreement herein referred to, then this approval is to take effect, otherwise to be null and void.

THOMAS CORWIN,  
*Secretary of the Treasury.*

*Copy of Exhibit No. 7.*

I, as collector of the port of San Francisco, do hereby accept the iron warehouse erected by Alexander Cross upon a part of the water lot No. 49, on Battery street, now in the occupancy of the United States government as a bonded warehouse, contracted to be built by Daniel Saffarans, as provided in a contract of which the within is a copy.

And I do hereby officially recognize said Cross as landlord; it being understood that I am to incur no individual responsibility in the premises. This acceptance to date as if done 14th of January, 1851.

T. BUTLER KING,

*As Collector of the port of San Francisco.*

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*Copy of Exhibit No. 8.*

Having sold to Alexander Cross, for a valuable consideration, all my interests herein mentioned, I, Daniel Saffarans, do hereby transfer and assign the agreement of which the foregoing instrument is, in substance, a copy, with all the rights, rents, and interests accrued, or to accrue, under or in virtue of the same, to Alexander Cross, hereby placing him, to all intents and purposes, in my stead as regards said agreement, as though he instead of myself had been the original party thereto, he taking all the benefits of said agreement, and all its responsibilities. And I do release, quit-claim, and convey all my right, title, interest, and lien, if any, and whatever it may be, to the said Cross and his heirs forever.

The said Cross is hereby entitled and authorized to receive all the rent that has accrued and is now in arrear, or that may hereafter accrue under said agreement, for the house therein mentioned and alluded to.

In testimony whereof, I have hereunto set my hand and seal this 10th day of July, 1851.

DANIEL SAFFARANS. [SEAL.]

Signed, sealed, and acknowledged in presence of the undersigned witnesses:

H. M. LUSHER.

C. G. LEONARD.

JAMES ROSE, jr.

*Copy of endorsement on the above.*

It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon endorse on it their approval. This 10th July, 1851.

DANIEL SAFFARANS.

*Exhibit No. 9.*

Know all men by these presents, that I, Daniel Saffarans, of the town of Memphis, in the State of Tennessee, do hereby nominate, constitute, and appoint Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon, my true and lawful attorneys in fact, for me and in my name to deliver to Alexander Cross, of San Francisco, in California, my assignment to said Cross of all my right, title, and interest in and to an iron warehouse in San Francisco, together with all rents accrued or to accrue on the same, as are more particularly set forth in my said assignment bearing date of the 1<sup>st</sup> of July, 1851, and attached to a certified copy of my contract of the 11th November, 1850, with T. Butler King, collector of San Francisco, for the rent of said house, &c.

And my said attorneys are also hereby fully authorized and empowered to receipt for and receive from said Cross all money, bonds, or notes stipulated to be received by me, as the consideration for said assignment, and to take from said Cross a release of all responsibility on my part arising out of any and all contracts heretofore made between us in relation to the building or renting of said house.

And my said attorneys are also hereby fully authorized and empowered, if any objection is made to the form of my said assignment or its mode of authentication, to alter and amend the same at their discretion, or in fact to make any new or other assignment for me.

And my said attorneys are also hereby fully empowered and authorized to substitute another attorney in their places, with the same full powers in the premises as are hereby conferred on them, hereby binding and obliging myself to ratify and confirm whatever my said attorneys or those substituted may do in the premises, and making their acts as binding on me as if done by myself.

DANIEL SAFFARANS. [SEAL]

Signed, sealed, and acknowledged, in presence of the undersigned witnesses:

H. M. LUSHER.

C. G. LEONARD.

JAMES ROSE, jr.

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*Copy of Exhibit No. 10.*

NEW YORK, July 25, 1851.

Know all men by these presents, that I, R. H. Crittenden, of Frankfort, Kentucky, do hereby nominate, constitute, and appoint George W. Guthrie, of the city of San Francisco, California, my true and lawful attorney in fact, to act for me under the foregoing joint power of attorney from Daniel Saffarans to Isaac Saffarans, A. P. Sheldon, and myself, with power of substitution, hereby authorizing the said Guthrie to exercise all the rights and powers which I myself could do under the said power of attorney from said Daniel Saffarans, binding myself to approve whatever the said Guthrie may do in the premises,



making his acts as binding as if done by me. Witness my hand and seal.

R. H. CRITTENDEN. [SEAL.]

Signed and sealed in presence of—

GEORGE N. SANDERS.

JAMES ELDREDGE.

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*Exhibit No. 11.*

Know all men by these presents, that I, A. P. Sheldon, of Sumner county, in the State of Tennessee, recently of San Francisco, in the State of California, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, Isaac Saffarans, B., of San Francisco aforesaid, my true and lawful attorney in fact, for me and in my name and stead to endorse my name and approval upon a certain deed of conveyance executed by Daniel Saffarans, of Shelby county, Tennessee, to Alexander Cross, of England, now in San Francisco, about the month of June, 1851, whereby the said Daniel Saffarans conveyed to said Cross an iron fire-proof warehouse of four stories, erected by said Cross in the city of San Francisco aforesaid; which said warehouse is now occupied by the government of the United States, under a lease from the said Daniel Saffarans, for custom-house purposes, it being now impracticable for me, in the absence of papers relating to the same, to describe the property conveyed by said deed with more minuteness and precision; which said deed was sent to California by the said Saffarans as an escrow, to take effect as a deed, upon condition that the same should be approved and endorsed by Robert Crittenden, the said Isaac Saffarans, B., and myself; and the same has been approved and endorsed by the said Robert Crittenden, by George W. Guthrie, his attorney in fact, and by the said Isaac Saffarans, B., and would have been approved and endorsed by myself in person had I not left California before the said deed arrived there.

And I hereby engage to ratify and confirm the approval and endorsement of the said deed by my said attorney in fact, as fully and amply as though the same were done by myself in proper person.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 19th day of November, 1851.

A. P. SHELDON. [SEAL.]

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*Exhibit No. 12.*

SAN FRANCISCO, *September 15, 1851.*

SIR: Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under the same to said Alexander Cross.

I remain, very respectfully, sir, your obedient servant,

DANIEL SAFFARANS,

Per Att'y, ISAAC SAFFARANS, B.

Hon. T. BUTLER KING,

*Collector of the port of San Francisco.*

*Copy of Exhibit No. 13.*

CUSTOM-HOUSE, SAN FRANCISCO,  
*Collector's Office, August 4, 1853.*

SIR: I have the honor to inform you that in obedience to instructions which I have received from the Secretary of the Treasury, under date of April 12, 1853, that the "pretended lease" under which the warehouse belonging to you, on Battery street, has been occupied for the storage of goods by the United States, "is not binding on the United States," and that I am to abandon that building. I shall, on the thirteenth instant, give up the possession of the said store, and not pay any rent for it after that date.

Respectfully, your obedient servant,  
RICHARD P. HAMMOND,  
*Collector.*

ALEX. CROSS, Esq.

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*Copy of Exhibit No. 14.*

SAN FRANCISCO, *August 13, 1853.*

SIR: I have to acknowledge the receipt of a letter from you, under date August 4, apprising me that in obedience to instructions from the Secretary of the Treasury you will, on the 13th instant, give up the possession of my warehouse on Battery street, and not pay any rent for it after that date.

I do not recognize a right in the Secretary of the Treasury to rescind my contract with the government in reference to said warehouse, and I shall therefore claim payment of rent, pursuant to said contract, until the expiration of the term for which the building was leased.

Respectfully, your obedient servant,

ALEX'R CROSS.

RICHARD P. HAMMOND, Esq.,  
*Collector of Customs.*

Rep. C. C. 198—2

1856. Nov. 14	To rent of iron warehouse on Battery street, San Francisco, from the 13th of August, 1853, to the 14th of November, 1856, equal 39 months, at \$1,500 per month, as per lease of 11th of November, 1850, ( <i>vide</i> exhibit No. 5, page 14 of printed petition)-----	\$58,500 00	1854. Sept. 1	By rent of entire store, received from F. S. Alvarez, from September 18, 1853, to September, 1, 1854, equal 12 months, at \$750 per month, less 5 per cent. for collection, ( <i>vide</i> deposition of Joseph Clarke)-----	\$8,550 00
			1856. Nov. 11	By rent of three-fourths of ground floor, received from J. J. Southgate & Co., from the 10th of August, 1855, to the 10th of November, 1856, at \$100 per month, less 5 per cent. for collection, ( <i>vide</i> deposition of Henry Lund and Joseph Clarke)-----	1,425 00
			14	By storage received from September 1, 1854, to November 14, 1856, less 5 per cent. for collection, as per deposition of Lund and Clarke, and account attached to Lund's deposition-----	4,917 37
				By balance -----	43,607 63
		58,500 00			58,500 00
Nov. 14	To balance due A. Cross this date, exclusive of interest -----	\$43,607 63			

ALEXANDER CROSS.

DR.

## The United States in account with Alexander Cross.

CR.

18

1856. Nov. 14	To rent of iron warehouse on Battery street, San Francisco, from the 13th of August, 1853, to the 14th of November, 1856, equal 39 months, at \$1,500 per month, as per lease of the 11th of November, 1850, ( <i>vide</i> exhibit No. 5, page 14 of printed petition)....	\$58,500 00	1854. Sept. 1	By rent of entire store, received of F. S. Alvarez, from September 1, 1853, to September 1, 1854, equal 12 months, at \$750 per month, less 5 per cent. for collection, ( <i>vide</i> Joseph Clarke's deposition).....	\$8,550 00
1858. April 30	To interest on the above from the 31st of March, 1855, (that being the average date between the 13th of August, 1853, and the 14th of November, 1856,) to April 30, 1858, equal three years one month, at 6 per cent. per annum.....	10,522 50	1856. Nov. 10	By rent of three-fourths of ground floor, received of J. J. Southgate, & Co., from August 10, 1855, to November 10, 1856, at \$100 per month, less 5 per cent. for collection, ( <i>vide</i> depositions of Henry Lund and Joseph Clarke).....	1,425 00
			14	By interest on the above from March 25, 1856, (that being the average date between August 10, 1855, and November 10, 1856,) to April 30, 1858, equal two years, one month, five days, at 6 per cent.....	179 30
				By net storage, received from September 1, 1854, to November 14, 1856, less 5 per cent. for collection, as per depositions of Henry Lund and Joseph Clarke, and account current attached to Lund's deposition .....	4,917 37
				By interest on the above from January 31, 1855, (that being the average date between September 1, 1854, and November 14, 1856,) to April 30, 1858, equal three years three months, at 6 per cent.....	959 89
				By balance due.....	50,796 89
		69,022 50			
April 30	By balance due Alexander Cross at this date.....	\$50,796 89			69,022 50

ALEXANDER CROSS.

## A.

The claim would be for ninety-two months.....	\$46,000
The proportion of the gales past due is up to April 13, 1856— $\frac{32}{92}$ of.....	\$46,000
And the proportion is therefore exactly.....	16,000
On which interest is to be cast up to the 13th April, 1856—thirty-two months half the time, or one year four months, or 8 per cent. on...	16,000 8
	<hr/> 128,000
	<hr/> 100
Sixty months from April 14 to end of lease, or precisely five years on which interest is to be deducted on the gales to fall due, which amount to the sum of \$30,000; on which interest is to be deducted for one-half the time, being 15 per cent.....	30,000 15
	<hr/> 150,000
	<hr/> 30,000
	<hr/> 450,000
	<hr/> 100
Therefore, to the sum of.....	\$46,000
Add interest on the gales for thirty-two months	1,280
As above.....	47,280
And deduct the interest as above for one-half of five years, being $2\frac{1}{2} \times 6 = 15$ .....	4,500
Leaves due to Mr. Cross.....	<hr/> <hr/> 42,780

## B.

[C is a calculation, &c., on the same principle, the loss estimated at \$500 per month ]

*Average of the years separately, supposing the payments to be made monthly.*

One year. The amount payable in one year is, at \$750	
per month.....	\$9,000 00
Interest on \$750 for 12 months at 6 per cent.....	\$45 00
Interest on \$750 for 11 months at 6 per cent.....	41 25
Interest on \$750 for 10 months at 6 per cent.....	37 50
Interest on \$750 for 9 months at 6 per cent.....	33 75
Interest on \$750 for 8 months at 6 per cent.....	30 00
Interest on \$750 for 7 months at 6 per cent.....	26 25
Interest on \$750 for 6 months at 6 per cent.....	22 50
Interest on \$750 for 5 months at 6 per cent.....	18 75
Interest on \$750 for 4 months at 6 per cent.....	15 00
Interest on \$750 for 3 months at 6 per cent.....	11 25
Interest on \$750 for 2 months at 6 per cent.....	7 50
Interest on \$750 for 1 month at 6 per cent.....	3 75
	<hr/>
	292 50
	<hr/> <hr/>

But from the above we must deduct  $\frac{1}{13}$  part, since interest is not payable until the *expiration* of a month, and the above table is constructed on the supposition of its being paid *in advance*, and comprehends, in reality, 13 months instead of twelve: Therefore the above sum is to be divided by 13, and the amount so found subtracted, and then the real amount paid and payable will appear—

$$\begin{array}{r}
 13)292\ 50(22\ 50 \\
 \underline{26} \\
 32 \\
 \underline{26} \\
 65 \\
 \underline{65} \\
 0 \\
 \underline{\hspace{1cm}}
 \end{array}$$

From \$292 50  
Deduct 22 50

Leaves 270 00—actual interest paid in 12 months, when money is legally payable at the end of each month and there is a failure to pay it.



## C.

This paper is a calculation of interest, &c., averaging the years separately, supposing the sum to be \$500 per month. In the paper B herewith the sum is \$750. As \$500 per month is the loss supposed in 92 months, and consequently makes up the sum in that time of \$46,000; it is proper to make an average of the years *separately* on that estimate. The principles applied are the same as in paper B.

Interest on \$500 for 12 months, at 6 per cent. per annum.....	\$30 00
For 11 months, at 6 per cent. per annum .....	27 50
For 10 months, at 6 per cent. per annum.....	25 00
For 9 months, at 6 per cent. per annum.....	22 50
For 8 months, at 6 per cent. per annum.....	20 00
For 7 months, at 6 per cent. per annum.....	17 50
For 6 months, at 6 per cent. per annum.....	15 00
For 5 months, at 6 per cent. per annum.....	12 50
For 4 months, at 6 per cent. per annum.....	10 00
For 3 months, at 6 per cent. per annum.....	7 50
For 2 months, at 6 per cent. per annum.....	5 00
For 1 month, at 6 per cent. per annum.....	2 50
	<hr/>
	13)195 00(15
	13
	<hr/>
	65
	65
	<hr/>

From this sum one-thirteenth is to be deducted for the same reason assigned in paper B, the table being in each case constructed on the same principle.

From \$195  
Deduct 15

Leaves 180 actual interest payable on \$6,000 in twelve months, when money is legally payable at the end of each month, and there is a failure so to pay it.

*Verification of the calculations of interest in paper B by the rule and calculation in this paper C.*

Proportion of the gales past due up to 13th April, 1856,  
 $\frac{3}{2}$  of \$46,000.—(See paper A).....

\$16,000

Interest then stated to be due on it.....

1,280

The money is payable monthly \$500. \$6,000 per year and the whole therefore is payable in two years eight months. Upon the calculation in this paper C, p. I, it will be paid as follows:

1st year of the first six thousand, payable monthly...	\$180
2d year. This entire six thousand is all due from the commencement of the year, and therefore full interest is chargeable on it for that whole year.....	360
3d year. The same observation is true of this \$6,000 in respect to the last eight months, but the full interest for eight months is but.....	240
Being two-thirds of the full interest for a year. On the second six thousand, half interest is due the year in which it is payable monthly, as in the first.....	180
And full interest in the third year for the time, only eight months, in that year.....	240
On the \$4,000 payable in eight months in the second year, but \$240 would be due for twelve months, and eight months is two-thirds of twelve and gives \$160 as full interest; but as this is payable, like the \$12,000 preceding, monthly, it being the first and only part of a year in which it falls due, the interest chargeable on it is the half of \$160.....	80
	<hr/>
	1,280
	<hr/>

Interest calculation verified as per the calculation of interest on the \$16,000 in paper A.

Interest calculation verified as in paper A, on the \$30,000 on which interest is to be deducted. As in the case of the \$16,000, the money is payable monthly, \$500 each month. Interest therefore will be the same for the same time and amount, but the sum is larger and the time longer; amount and time are the constituents of interest, according to which the same rate of interest will bring varying amounts.

Interest in paper A, stated to be due on the \$30,000	\$4,500
\$6,000 per year, and the whole is payable in five years.	
1st year of the first \$6,000 .....	\$180
But it has four (4) full years to run on interest, inasmuch as the whole sum is to be paid in anticipation.	
Four full year's interest, is $\$360 \times 4 =$ .....	1,440
2d \$6,000, first year.....	180
Which has three years more of full interest $\$360 \times 3 =$	1,080
3d year's \$6,000 monthly.....	180
2 years at full interest.....	720
4th year's \$6,000 monthly.....	180
And one year (the 5th) of entire interest.....	360
5th year's \$6,000 is but monthly, as the time (5 years) then expired; therefore only this sum is chargeable on it .....	180
	<hr/>
As in paper A.....	4,500
	<hr/>

Therefore the result is the same as in paper A, viz :	
Amount as in the Secretary's letter.....	\$46,000
Add amount of interest verified in this paper.....	1,280
	<hr/>
	47,280
Deduct the amount of interest to be deducted from the gales to fall due.....	
	4,500
	<hr/>
Leaves due to Mr. Cross.....	42,780
	<hr/> <hr/>

In paper A the same sum as made out by a different mode of calculation, but the same in principle.

Very respectfully,

WM. ANDERSON.

#### IN THE COURT OF CLAIMS.

#### ALEXANDER CROSS *vs.* THE UNITED STATES.

It is agreed that the paper marked thus, (Paper No. 1,) and put on file in this case, is a true copy of the original agreement between Daniel Saffarans of the first part, and the United States of America by James Collier, collector of the district of San Francisco, California, of the second part, and of the approval of said agreement by W. M. Meredith, Secretary of the Treasury.

That the paper marked thus, (Paper No. 2,) and also put on file in this case, contains true copies of the originals of the following enumerated papers, to wit :

1. A copy of the article of agreement of the 11th of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States government of the first part, and Daniel Saffarans of the second part.

2. A copy of the approval of the last named article of agreement, by Thomas Corwin, Secretary of the Treasury, endorsed on said original article of agreement.

3. A copy of the assignment of said last named article of agreement, by said Daniel Saffarans, to Alexander Cross, the plaintiff in this case.

4. A copy of the approval of said assignment, by R. H. Crittenden, A. P. Sheldon, and Isaac Saffarans, B., as the attorneys of the said Daniel Saffarans, endorsed on said assignment.

5. A copy of the letter of said Daniel Saffarans, by his attorney, Isaac Saffarans, B., of the date of the 15th of September, 1851, addressed to T. Butler King, collector of the port of San Francisco, notifying him that the said article of agreement of the 11th of November, 1850, had been assigned to said Alexander Cross, and requesting him to pay all back and future rents to said Cross.

6. A copy of the acceptance by said T. Butler King, as collector of the port of San Francisco, of the iron warehouse named in said article

of the 11th of November, A. D. 1850, and of his official recognition of said Alexander Cross as the landlord to whom the rents of said warehouse were to be paid.

It is agreed that the paper marked thus, (Paper No. 3,) and also put on file in this case, is the original letter of Richard P. Hammond, collector of San Francisco, to Alexander Cross, notifying him that in pursuance to instructions from the Secretary of the Treasury, he should, on the 13th of August, 1853, abandon said warehouse, and stop the payment of rent from that date.

M. BLAIR,  
*Solicitor United States.*  
S. F. VINTON  
For ALEX. CROSS.

JUNE 4, 1857.

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*Articles of agreement made and concluded this twenty-eighth day of April, in the year eighteen hundred and forty-nine, by and between Daniel Saffarans of the first part, and the United States of America, by James Collier, collector of the district of San Francisco, California, acting by the direction and authority of William M. Meredith, Secretary of the Treasury, of the second part:*

The said party of the first part, for the considerations hereinafter mentioned, doth, for himself and his heirs, executors, and administrators, hereby covenant with the said party of the second part, that he will well and substantially erect, build, and finish a store or building in said San Francisco of the dimensions and description hereinafter mentioned, the whole subject to such modifications and alterations as the said collector of San Francisco shall require or approve, to wit: said store to be four stories high, twenty-five feet wide, and one hundred feet long, to be constructed of iron and brick, so far as may be necessary to make them strictly fire-proof, and to be built in the strongest and most approved manner; the said collector reserving to himself the sole power and privilege of selecting the site or ground upon which said store or stores shall be erected. It is further understood that said collector is to lease said store or stores of said party of the first part for the term of fifteen years. The rent per annum to be determined upon and fixed by the collector at the time said store or stores shall be erected and received by said collector.

And the said party of the first part doth further covenant that he will erect and finish said store in such manner as the said collector shall require or approve; so that the said store shall be ready for occupancy on or before the first day of September, eighteen hundred and fifty.

And the said party of the first part doth further covenant that whenever the said store shall be erected and finished and ready for occupancy, to the acceptance of the said collector, he will lease and he doth hereby lease the said store to the said party of the second part for a term commencing on the day when the said collector shall

approve and accept of said store, and terminating on the expiration of the term aforesaid, to wit: fifteen years from the time they are received by said collector, upon the terms and conditions and for the rent hereinafter mentioned.

And the said party of the first part doth further covenant that the said store is free from all incumbrance, and that the United States shall not be liable for any lien upon said store during the term aforesaid, or any other claim of any nature whatsoever, except only the rent hereinafter stipulated, and that he will keep the said store in good and sufficient repair, injuries arising from the misconduct of officers of government only excepted.

And the said party of the second part do hereby covenant with the said party of the first part, his heirs, executors, and administrators, that whenever the said store shall be ready for the occupancy, to the acceptance of the said collector, they will hire and lease of the said party of the first part the said store upon the terms and conditions and for the period herein mentioned, that they will pay rent for the said store at the rate of \_\_\_\_\_ dollars per annum; said rent to be paid quarter-yearly on the first of January, April, July, and October, and that the said rent on said store shall commence as soon as the same shall be ready for occupancy and accepted by the said collector as aforesaid.

And it is further agreed by the said parties of the first and second parts that, should the said store be destroyed or injured by fire or the action of any of the elements, so that the same shall become untenable, the said party of the first part shall rebuild and repair the same as soon as practicable; and the rent of said store shall cease and remain discontinued during all the time the occupancy of said store shall be interrupted or prevented from the causes aforesaid, or any other cause not arising from the act or default of the Secretary of the Treasury or the collector aforesaid.

In testimony whereof the said parties to these presents on the day and year first above written have hereunto and to two other copies of the same, interchangeably set their hands and seals, the said party of the first part in person, and the United States by James Collier, collector, acting as aforesaid; and William M. Meredith, Secretary of the Treasury, in evidence of the authority aforesaid and of his approval of the premises, has hereunto affixed his official signature.

DANIEL SAFFARANS. [L. S.]

JAMES COLLIER, [L. S.]

*Collector of the District of Upper California.*

Signed, sealed, and delivered in presence of—

SAMUEL T. WYLIE.

N. HEADINGTON.

STATE OF OHIO, }  
Hamilton County, } ss.

Personally appeared before me the undersigned, a notary public in and for the county and State aforesaid, on this twenty-eighth day of April, A. D. eighteen hundred and forty-nine, Daniel Saffarans and

James Collier, the parties to the foregoing instrument, and severally acknowledged the same to be their voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my [L. S.] notarial seal, this twenty-eighth day of April, eighteen hundred and forty-nine.

SAMUEL T. WYLIE,  
*Notary Public.*

The foregoing articles of agreement are approved, on the following express reservations and conditions only, to wit: First. That wherever the name of James Collier, collector of the district of San Francisco, California, is mentioned, or where the words collector or said collector are used, they shall be deemed and understood to mean and apply to the collector of the district aforesaid in his official capacity for the time being.

Second. That this agreement is understood and intended to apply to the construction and renting of *one* "store or building" only, and to no more, unless hereafter deemed necessary, and then rented with the approbation of the Secretary of the Treasury.

Third. The rate of rent to be paid for the building to be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury.

Fourth. The rent stipulated for to depend upon and be paid out of appropriations expressly made by Congress for the purpose, and from no other source, or according to the existing laws at the times of payment.

In testimony whereof, I, William M. Meredith, Secretary of the [L. S.] Treasury, have hereunto signed my name and affixed the seal of the Treasury Department this eighth day of May, in the year of our Lord one thousand eight hundred and forty-nine.

W. M. MEREDITH,  
*Secretary of the Treasury.*

I, William M. Meredith, Secretary of the Treasury, do hereby certify the within to be a correct and true copy of the original on file in this department.

In witness whereof I have hereunto signed my name and affixed the [L. S.] seal of the Treasury Department this tenth day of May, in the year of our Lord one thousand eight hundred and forty-nine.

W. M. MEREDITH,  
*Secretary of the Treasury.*

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Know all men by these presents, that I, Daniel Saffarans, a resident of the State of Tennessee, have made, constituted, and appointed, and by these presents do make, constitute, and appoint George N. Sanders, of the city of New York, my true and lawful attorney for me



and in my name, place, and stead, for the purposes hereinafter mentioned: Whereas, on the eighth day of April, in the year eighteen hundred and forty-nine, articles of agreement were made and concluded by and between me, of the first part, and James Collier, collector of the district of San Francisco, California, acting by the direction and authority of William M. Meredith, Secretary of the Treasury of the United States, of the second part, of which said articles of agreement a certified copy is hereunto annexed; and whereas, said articles of agreement require me to erect the store or building mentioned in said articles of agreement on or before the first day of September, eighteen hundred and fifty; and whereas, in order to fulfill all the requirements of said articles of agreement on the part of the party of the first part, it is necessary that other parties should be interested in the contract made between the parties to the said articles of agreement; therefore I do appoint the said George N. Sanders my true and lawful attorney, with full power to negotiate a loan or loans of money with any person or persons in the United States of America or elsewhere, for the purpose of completing and fulfilling the contract aforesaid; said attorney having, by these presents, full power and authority to associate with himself such person or persons as he may see fit, to carry out the object of the said agreement; such person or persons as he may select or agree with to have such share of the rents, issues, and profits to arise and grow out of the store or building to be erected as per said agreement, and are not to require the payment of interest on such sums as they may advance until such store or building has been taken possession of by the United States government or its representative, and such rent as may be agreed upon by the parties named in said articles of agreement shall have been paid, that is to say, that the rent to be paid for such store or building shall be appropriated, as it is paid quarterly, to the persons who may have become interested in said agreement, in proportion to their respective shares and interest therein, and as may be agreed upon between them and my attorney hereby appointed. And the said George N. Sanders, in consideration of the labor and trouble he may have in executing the powers herein contained, shall have and receive, and the same is hereby granted and given him, one-sixth of the whole interest of the party of the first part in said article of agreement and the subject-matter thereof, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as I might or could do, if personally present with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this seven-  
[L. s.]      tenth day of May, in the year one thousand eight hundred  
                    and forty-nine.

DAN'L SAFFARANS.

Sealed and delivered in presence of—  
AND'W STRAHAN.

STATE OF NEW YORK, }  
*City and County of New York.* } ss.

On this seventeenth day of May, 1849, before me came personally Daniel Saffarans, to me known to be the person described in and who executed the above power of attorney, and acknowledged to me that he had executed the same.

DAN. MARVINE.

*Commissioner of Deeds for the City and County of New York.*

UNITED STATES OF AMERICA,  
*Treasury Department, May 8, 1856.*

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed is a true copy of the original which is now on file in this department.

In witness whereof I have hereunto set my hand, and caused  
 [L. s.] the seal of the Treasury Department to be affixed, on the day  
 and year first above written.

JAMES GUTHRIE,  
*Secretary of the Treasury.*

#### ORIGINAL LEASE.

*Articles of agreement entered into this 11th day of November, in the year eighteen hundred and fifty, between T. Butler King, collector of the port of San Francisco for and on behalf of the United States government, of the first part, and Daniel Saffarans, of Tennessee, of the second part, witnesseth :*

That whereas the party of the second part did, on the 28th day of April, 1849, enter into a contract with James Collier (then collector of the port of San Francisco) for the construction of an iron fire-proof warehouse twenty-five feet wide by one hundred feet deep and four stories high, to be used for custom-house purposes at said port of San Francisco, under a lease to the government for the term of fifteen years, which said contract was approved by William M. Meredith (then Secretary of the Treasury) on the 8th day of May, 1849, on conditions as expressed in said approval, and among others the following : "The rate of rent to be paid for the building to be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury."

And whereas the party of the second part to this agreement, in fulfillment of his contract with the said James Collier, has erected an iron fire-proof warehouse in San Francisco of the dimensions and quality as stipulated for, and whereas said Collier, as collector, did, on the        day of        contract with the party of the second part to this agreement to rent said warehouse for a term of fifteen years at the rate of two thousand dollars per month, which said contract was sent on to Washington city for the approval of the Secretary of the

Treasury, and whereas the present Secretary of the Treasury deeming the rate of rent for the term of fifteen years to be unreasonable, has disapproved of said contract of the      day of      .

But the government of the United States being much in need of said iron warehouse for custom-house purposes in San Francisco, and said Saffarans being willing to make some abatement of the terms agreed on in the contract entered into with the said Collier on the      day of      , the parties to this agreement having concluded the following terms :

The party of the first part hereby agrees to rent said warehouse from the party of the second part for the term of ten years from the day possession shall be delivered to the present collector, at a rent of fifteen hundred dollars per month, payable monthly by the collector of San Francisco ; and the party of the second part doth hereby further covenant that said store is free from all incumbrances, and the United States shall not be liable for any lien upon said store during the term aforesaid, or any other claim of any nature whatsoever, except only the rent herein stipulated to be paid, and that he will keep said store in good and sufficient repair, injuries arising from the misconduct of the officers of the government only excepted.

And it is further agreed by the parties of the first and second part that should said store be destroyed or injured by the action of any of the elements so that the same shall become untenable, the said party of the second part shall rebuild or repair said store as soon as practicable, and the rent of said store shall cease and remain discontinued during all the time the occupancy shall be interrupted from the causes aforesaid or any other cause not arising from the act or default of the officers of the government.

In testimony whereof the parties to this agreement have respectively hereunto set their hands and affixed their seals the day and year before written.

T. BUTLER KING, [L. s.]

*Collector of the port of San Francisco.*

DANIEL SAFFARANS, [L. s.]

The foregoing articles of agreement are approved upon the following express understanding and conditions, that is to say : That the collector, T. Butler King, esq., upon his arrival at San Francisco, shall first examine the warehouse in question, and duly accept the same as being substantially of the character, description, and dimensions required by the stipulations contained in the former articles of agreement herein referred to ; then this approval is to take effect ; otherwise to be null and void.

THOMAS CORWIN,

*Secretary of the Treasury.*

TREASURY DEPARTMENT,

*Register's Office, June 19, 1851.*

I certify the foregoing articles of agreement are true copies of the originals on file in this department.

TOWNSEND HAINES, *Register.*

Having sold to Alexander Cross, for a valuable consideration, all my interests hereafter mentioned, I, Daniel Saffarans, do hereby transfer and assign the agreement, of which the foregoing instrument is, in substance, a copy, with all the rights, rents, and interests, accrued or to accrue under or in virtue of the same, to Alexander Cross, hereby placing him, to all intents and purposes, in my stead, as regards said agreement, as though he instead of myself, had been the original party thereto, he taking all the benefits of said agreement and all its responsibilities; and I do release, quit claim, and convey all my right, title, interest, and lien, if any, and whatever it may be, to the said Cross and his heirs forever. The said Cross is hereby entitled and authorized to receive all the rent that has accrued and is now in arrears, or that may hereafter accrue under said agreement, for the house therein mentioned and alluded.

In testimony whereof, I have hereunto set my hand and seal, this 10th day of July, eighteen hundred and fifty-one.

DAN'L SAFFARANS. [SEAL.]

Signed, sealed, and acknowledged in presence of the undersigned witnesses.

H. M. LUSHER.

O. G. LEONARD.

JAMES ROSE, jr.

It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon endorse on it their approval, this 10th of July, 1851.

DAN'L SAFFARANS.

STATE OF TENNESSEE, }  
Shelby County, } ss.

Personally appeared before me, James Rose, a duly commissioned and sworn notary public in and for said county, Daniel Saffarans, the bargainor above named, with whom I am personally acquainted, who acknowledged the execution of the foregoing transfer and assignment, for the purposes therein contained.

Witness my hand and the impress of my seal of office at Memphis, [L. s.] in said county, this 10th day of July, 1851.

JAMES ROSE, *Notary Public.*

[Endorsed.]

SAN FRANCISCO,  
September 15, 1851.

SIR: Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under the same to said Alexander Cross.

I remain, very respectfully, sir, your obedient servant,

DANIEL SAFFARANS,

Per attorney, ISAAC SAFFARANS, B.

Hon. T. BUTLER KING,

*Collector of the Port of San Francisco.*

The undersigned signifies his approval to the within transfer by affixing hereto his hand and seal, this twenty-sixth day of January, one thousand eight hundred and fifty-two.

A. P. SHELDON, [SEAL.]  
Per ISAAC SAFFARANS, B.,  
*His Attorney in fact.*

Signed, sealed, and delivered in presence of—

Witness: WARD McALLISTER.

STATE OF CALIFORNIA,  
*County of San Francisco.*

The undersigned signify their approval to the within transfer by affixing hereto their seals and signatures, this fifteenth (15th) day of September, A. D. one thousand eight hundred and fifty-one.

ROB'T H. CRITTENDEN, [SEAL.]  
By his attorney, G. W. GUTHRIE.  
ISAAC SAFFARANS, B. [SEAL.]

Sealed and delivered in presence of—

WARD McALLISTER.

Recorded in Liber 1 of Leases, pages 476 to 480 inclusive.

H.

I, as collector of the port of San Francisco, do hereby accept the iron warehouse erected by Alexander Cross upon a part of the water lot No. 49, on Battery street, now in the occupation of the United States government as a bonded warehouse, as the warehouse contracted to be built by Daniel Saffarans, as provided in a contract of which the within is a copy. And I do hereby officially recognize said Cross as landlord, it being understood that I am to incur no individual responsibility in the premises. This acceptance to date as if done January 14, 1851.

T. BUTLER KING,  
*As Collector of the Port of San Francisco.*

Recorded in county recorder's office of San Francisco, September 20, 1851, in Liber No. 1 of Leases, pages 478, &c., at 1 o'clock p. m.

JOHN A. McGLYNN,  
*County Recorder,*  
By JAMES C. GRADY.

STATE OF CALIFORNIA, }  
*County of San Francisco.* }

On this twenty-sixth day of January, A. D. 1852, personally appeared before me, a notary public in and for the said county, Isaac Saffarans, B., known to me to be attorney in fact of A. P. Sheldon, the individual described in and who executed foregoing approval of transfer by his said attorney, and the said Isaac Saffarans, B., acknowledged to



me that he executed the same as the act and deed of the said A. P. Sheldon.

In faith and testimony whereof, I have hereunto set my hand and  
[L. s.]      affixed my seal of office, this 26th day of January, A. D.  
1852.

WARD McALLISTER,  
*Notary Public.*

Recorded in the office of the county recorder in Liber No. 2 of  
Leases, p. 79, January 29, 1852, D, 12 o'clock and 15 minutes p. m.

J. A. McGLYNN,  
*County Recorder,*  
Per M. E. T.

Recorded in county recorder's office of San Francisco, September  
20, 1851, in Liber No. 1 of Leases, pages 476, &c., at 1 o'clock p. m.

CUSTOM-HOUSE, SAN FRANCISCO,  
*Collector's Office, August 14, 1853.*

SIR: I have the honor to inform you, that in obedience to instructions which I have received from the Secretary of the Treasury under date of April 12, 1853, that the "pretended lease" under which the warehouse belonging to you on Battery street has been occupied for the storage of goods by the United States, "is not binding on the United States," and that I am to abandon that building. I shall on the 13th instant give up the possession of the said store, and not pay any rent for it after that date.

Respectfully your obedient servant,

RICHARD P. HAMMOND,  
*Collector.*

ALEXANDER CROSS, Esq.

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Know all men by these presents that I, A. P. Sheldon, of Sumner county, in the State of Tennessee, recently of San Francisco, in the State of California, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint Isaac Saffarans, B., of San Francisco aforesaid, my true and lawful attorney in fact, for me and in my name and stead to endorse my name and approval upon a certain deed of conveyance, executed by Daniel Saffarans of Shelby county, Tennessee, to Alexander Cross, of England, now in San Francisco, about the month of June, 1851, whereby the said Daniel Saffarans conveyed to the said Cross an iron fire-proof warehouse of four stories, erected by said Cross in the city of San Francisco aforesaid, which said warehouse is now occupied by the government of the United States, under a lease from the said Daniel Saffarans, for custom-house purposes; it being now impracticable for me, in the absence of papers relating to the same, to describe the property conveyed by said deed with more minuteness and precision; which



said deed was sent to California by the said Daniel Saffarans as an *escrow*, to take effect as a deed, upon condition that the same should be approved and endorsed by Robert Crittenden, the said Isaac Saffarans, B., and myself; and the same has been approved and endorsed by the said Robert Crittenden, by George W. Guthrie, his attorney in fact, and by the said Isaac Saffarans, B., and would have been approved and endorsed by myself in person, had I not left California before the said deed arrived there.

And I hereby engage to ratify and confirm the approval and endorsement of the said deed by my said attorney in fact, as fully and amply as though the same were done by myself in proper person.

In testimony whereof, I have hereunto set my hand and affixed my seal this 19th day of November, in the year of our Lord one thousand eight hundred and fifty one.

A. P. SHELDON. [L. S.]

STATE OF TENNESSEE, }  
Sumner County. }

Personally appeared before me, John L. Bugg, clerk of the county court of said Sumner county, A. P. Sheldon, the bargainer, with whom I am personally acquainted, and who acknowledged that he executed the foregoing power of attorney, for the purposes therein specified.

Witness my hand and seal of office, at office in the town of Gallatin, [L. S.] this, the 19th day of November, A. D. 1851.

JOHN L. BUGG.

*Clerk of Sumner County Court.*

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Know all men by these presents, that I, Daniel Saffarans, of the town of Memphis, in the State of Tennessee, do hereby nominate, constitute, and appoint Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon, my true and lawful attorneys in fact, for me and in my name to deliver to Alexander Cross, of San Francisco, in California, my assignment to said Cross of all my right, title, and interest in and to an iron warehouse in San Francisco, together with all rents accrued, or to accrue on the same, as are more particularly set forth in my said assignment bearing date of the 10th day of July, 1851, and attached to a certified copy of my contract of 11th November, 1850, with T. Butler King, collector of San Francisco, for the rent of said house, &c.

And my said attorneys are also hereby fully authorized and empowered to receipt for and receive from said Cross all money, bonds, or notes stipulated to be received by me as the consideration for said assignment, and to take from said Cross a release of all responsibility on my part, arising out of any and all contracts heretofore made between us in relation to the building or renting of said house.

And my said attorneys are also hereby fully authorized and empowered, if any objection is made to the form of my said assignment or its mode of authentication, to alter or amend the same at their discretion or, in fact, to make any new or other assignment for me.

And my said attorneys are also hereby fully empowered and authorized.  
Rep. C. C. 198—3

ized to substitute another attorney in their places, with the same full powers in the premises as are hereby conferred on them; hereby binding and obliging myself to ratify and confirm whatever my said attorneys, or their substitute, may do in the premises, and making their acts as binding on me as if done by myself.

In testimony whereof I have hereunto set my hand seal this 10th day of July, 1851.

DANL. SAFFARANS. [L. s.]

Signed, sealed, and acknowledged in presence of the undersigned witnesses

H. M. LUSHER,  
C. G. LEONARD,  
JAMES ROSE, JR.

STATE OF TENNESSEE, }  
Shelby county, } ss.

Personally appeared before me, James Rose, a duly commissioned and sworn notary public, in and for said county, Daniel Saffarans, the constituent above named, with whom I am personally acquainted, who acknowledged the execution of the within power of attorney for the purposes therein contained.

Witness my hand and the impress of my seal of office at Memphis, [L. s.] in said county, July 10, 1851.

JAS. ROSE,  
*Notary Public.*

Recorded at the office of the county recorder, in Liber 1, of Powers of Attorney, page 501, September 18, 1851, at 1 o'clock and 25 minutes p. m.

JOHN. A. MCGLYNN,  
*County Recorder.*

NEW YORK, July 25, 1851.

Know all men by these presents, that I, R. H. Crittenden, of Frankfort, Kentucky, do hereby nominate, constitute, and appoint George W. Guthrie, of the city of San Francisco, California, my true and lawful attorney in fact, to act for me under the foregoing joint power of attorney from Daniel Saffarans to Isaac Saffarans, A. P. Sheldon, and myself, with power of substitution, hereby authorizing the said Guthrie to exercise all the rights and powers which I myself could do under the said power of attorney from Daniel Saffarans, binding myself to approve whatever the said Guthrie may do in the premises, making his acts as binding as if done by me.

Witness my hand and seal.

R. H. CRITTENDEN. [L. s.]

Signed and sealed in presence of—

JAMES ELDREDGE,  
GEO. N. SANDERS.

STATE OF CALIFORNIA, }  
 County of San Francisco, } ss.

On this 18th of September, A. D. 1851, before me, the undersigned deputy county recorder in and for said county, personally appeared James Eldredge, known to me to be a subscribing witness to the execution of the foregoing instrument by R. H. Crittenden, who, on being by me duly sworn, did depose and say: That he was present when the said Crittenden executed the said instrument, and that the said Crittenden acknowledged in his presence that he executed the same freely and voluntarily, and for the use and purposes therein expressed, and that he, the said Eldredge, thereupon became a subscribing witness. Witness my hand and seal of office.

[L. s.]

JAS. O'GRADY,  
*Deputy County Recorder.*

Recorded in the office of the County Recorder of San Francisco, Lib. 1, Powers of Attorney, p. 501, September 28, 1851, at 1 o'clock and 25 minutes p. m.

JOHN A. MCGLYNN, *County Recorder.*  
 By JAS. O'GRADY, *Deputy.*

WASHINGTON, June 4, 1857.

I waive all objection to the admissibility of this paper as evidence.  
 M. BLAIR, *Solicitor.*

Know all men by these presents, that I, Daniel Saffarans, of the county of Shelby, and State of Tennessee, have nominated, constituted and appointed, and by these presents do nominate, constitute, and appoint my son, Isaac Saffarans, B., now of San Francisco, in the State of California, my true and lawful attorney in fact, for me and in my name to demand, collect, and receive all moneys due to me, or hereafter to become due to me, in the State of California; and particularly to demand and receive from the collector of the customs at the port of San Francisco, or any other proper officer whose duty it may be to pay the same, all moneys now due or hereafter to become due to me from the government of the United States of America, for the rent of an iron warehouse in San Francisco, under a contract made by me with the said government, and full receipts and acquittances for all such moneys to execute in my name.

And I do also hereby further authorize and empower my said attorney in fact, for me and in my name, to purchase from Alexander Cross, all his interest in an iron warehouse in San Francisco, erected by said Cross under a contract with me; the extent of said interest being twenty-seven and two-thirds one hundredths ( $27\frac{2}{3}$ -100) of the whole, and to pay to said Cross whatever may be due to him from me on account of advances made by him for me towards the purchase of the lot on which the said warehouse is erected, and the erection of said

warehouse ; and if it shall be necessary to raise money for the purpose of making the said purchase and payment, I hereby authorize my said attorney in fact to raise the same by a loan, to any amount not exceeding ninety thousand dollars, (\$90,000,) and to secure the repayment thereof by an assignment of the rents of the said warehouse, hereafter to become due from the government of the United States, in such manner as may be agreed on by the party or parties loaning the money ; and my said attorney in fact, to whose discretion I confide all the details of the necessary arrangements respecting the security to be given for said loan ; and I hereby engage to ratify and confirm all the acts and things that may be done by my said attorney in fact in the premises, pursuant to this power of attorney, in as full and ample a manner as though the same were done by myself in proper person.

Given under my hand and seal this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

DAN'L SAFFARANS. [SEAL.]

STATE OF TENNESSEE, }  
Shelby county, } ss.

Personally appeared before me, Jas. Rose, a duly commissioned and qualified notary public, in and for said county, Daniel Saffarans, the within named constituent with whom I am personally acquainted, who acknowledged the execution of the within power of attorney for the purposes therein contained.

Witness my hand and the impress of my seal of office, at Memphis, [SEAL.] in said county, this 12th day of April, 1851.

JAS. ROSE,  
Notary Public.

Recorded in the office of the county recorder of San Francisco, in Liber 1 of Powers of Attorney, page 500, September 18, 1851, at 11 o'clock, a. m.

JOHN A. MCGLYNN,  
County Recorder.  
By JAS. O'GRADY,  
Deputy.

JUNE 4, 1857.

I waive objection to the admissibility of this paper in evidence.

M. BLAIR, Solicitor.

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IN THE COURT OF CLAIMS.—No. 771.

ALEXANDER CROSS vs. THE UNITED STATES.

I consent that testimony may be taken in the above entitled cause without notice to me, reserving the right to cross-examine the witnesses if I shall deem it proper to do so after the return of the examination in chief.

M. BLAIR, Solicitor.

STATE OF CALIFORNIA,  
*City and county of San Francisco,* } ss.

On this 16th day of July, A. D. 1857, personally came Henry Lund, who was sworn to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States; and he does, upon oath, testify that his name is Henry Lund; that he is a storekeeper for Cross & Co.; that he is between twenty-four and twenty-five years of age; that he has resided in this city the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. How long have you been storekeeper for Cross & Co.?

Answer. Since February, A. D. 1854, up to this time.

Question. Do you know the building in question in this claim?

Answer. Yes, sir.

Question. Have you kept an account of all the storage received in that building since you have been storekeeper for Cross & Co.?

Answer. Yes, sir.

Question. Will you produce that account?

Answer. Here it is sir.

NOTE.—The account is here produced and annexed to this deposition, marked A.

Question. Does this account show Mr. Lund the time when the storage was received, the time when it was delivered, and the rate of storage?

The question was objected to by counsel for the United States, and withdrawn by counsel for claimant.

Question. By whom was that account marked A made up; when was it made up; and from what was it taken?

Answer. It was made up by myself; it was made up within the last two weeks; it was extracted from Cross & Co.'s storage books and from copies of storage bills rendered, with the exception of bills made out against Cross & Co. themselves, commencing at number twenty-two and ending at twenty-eight, inclusive.

Question. Who kept the storage books from which that account was made?

Answer. I did, sir.

Question. The storage bills rendered, of which you have spoken, what were they taken from?

Answer. From the storage books.

Question. From your own knowledge, as storekeeper of Cross & Co., can you state that the account marked A is a full and correct account of all the storage received in that building from the time you commenced with them up to the 14th of November, 1856?

Answer. I commenced in February, and no storage was received until September the 1st, 1854; from that time until the 14th of November, 1856, I think the account marked A shows a fair statement; I think it is correct, according to my best knowledge.

Question. Have you any doubt about its correctness?



The counsel for the United States objects, and the counsel for claimant withdraws the question.

The counsel for claimant having closed, the counsel for the United States here took the witness.

Question. Have Cross & Co. had any other person besides yourself who has acted at any time as storekeeper since February, 1854?

Answer. No, sir.

Question. Have they had other warehouses in San Francisco in which they have stored goods for hire?

Answer. Yes, sir.

Question. During the whole of the period since you have been storekeeper for them?

Answer. Yes, sir.

Question. How many other warehouses, besides the one in question, have they had during that time?

Answer. Two others.

Question. Have goods been stored in the two other warehouses during said time in preference to the one in question?

Answer. There was no preference given to any warehouse, I had myself the control of putting or storing the goods where I pleased in three warehouses, and being disinterested I put them in all alike.

Question. Was not your interest the same as that of your employers?

Answer. My only interest was a monthly salary.

Question. Were there any goods stored in the other two warehouses of Cross & Co. between February and the first of September, 1854?

Answer. Yes, sir.

Question. Were they full or nearly so during that period?

Answer. Sometimes nearly full, at other times not half full.

Question. How did it happen that no goods at all, as you have above stated, were stored in the warehouse in question during that period, from February, 1854, to September 1, 1854, if no preference was given to the other two warehouses as you have stated, in storing goods?

Answer. What I have above stated about goods stored in the said warehouses during that period, I meant goods stored by Cross & Co., or received on storage by Cross & Co. The reason there were no goods stored during that period by Cross & Co., or received on storage during that period, was because the building was rented to another party, and that party had the full control of it. I mean that I could not put any goods in there.

Question. Who was that party?

Answer. F. S. Alvarez

Question. What rent did he pay for said warehouse during that period to Cross & Co.?

Answer. I do not know, sir.

Question. Who kept the books of Cross & Co.?

Answer. Joseph Clark.

Question. Did he keep all the books of the firm?



Answer. I think he did, except the storage-books.

Question. Was not the principal business of Cross & Co. storing goods in San Francisco?

Answer. No, sir.

Question. How did it happen that Clark did not keep the books containing their storage accounts?

Answer. Because the storekeeper who was before me kept the storage-books, and I think the general rule in the city is that storekeepers keep these accounts.

Question. Was the warehouse in question full of goods at any time from the 1st of September, 1854, to the 14th of November, 1856?

Answer. No, sir.

Question. Was it most of the time during that period empty or nearly so?

Answer. It was never entirely empty, and there were times that there were very few goods in it, and at other times nearly full, according to how goods came in and went out.

Question. Were all the goods received and stored in said warehouse that were offered or that could have been obtained on storage by Cross & Co., during said period?

Answer. All the goods that were offered, or that could have been obtained, were stored in the three warehouses, and there was no preference given to either, as I have above stated.

Question. Was the warehouse in question used by Cross & Co., or by any other person or persons with their permission, for any other purpose than the storing of the goods which you have mentioned, during the period from 1st of September, 1854, to 14th of November, 1856?

Answer. The lower floor was occupied from the latter part of 1855 to the 14th of November, 1856, and is so now. The other three floors of the store were occupied by storage, as I have mentioned; they were not occupied for any other purpose.

Question. For what purpose and by whom was the lower or ground floor occupied, and at what rent, from the latter part of 1855, as you have mentioned?

Answer. It was occupied by Southgate & Co. for the ship chandlery business. The rent I do not know.

Question. Is the ground floor the most valuable for business purposes?

Answer. It is generally considered the most valuable.

Question. Where are the storage books of Cross & Co?

Answer. They were in the storage office of Cross & Co. when I left to come here.

Question. Are all the entries in said books in your handwriting, and were they all made by you?

Answer. All the entries since I became storekeeper are in my handwriting.

Question. Is exhibit A all in your handwriting?

Answer. All of said exhibit is in my handwriting, except the date and signature of Cross & Co. at the foot of extract from storage books, and also at the end of exhibit A.

Question. Can you swear positively that exhibit A contains a true account of all the goods that were stored in the warehouse in question from the 1st September, 1854, till 14th November, 1856, except the goods had in the lower floor of said warehouse, as you have mentioned, by Southgate & Co. during the time that they occupied said lower floor?

Answer, Yes, sir.

Question. How does it happen that Cross & Co.'s storage books do not exhibit a full account of the storage taken into said warehouse, but that you are obliged to resort to copies of bills for storage rendered?

Answer. The storage books contain the number of packages taken in, the date of receipt and the date of the delivery, and by that I can see how many tons there are stored every month, and I make out my storage bills from that.

Question. Did you not say on your direct examination that exhibit A was extracted from Cross & Co.'s storage books and from copies of bills for storage rendered, with the exception of the bills made out against Cross & Co?

Answer. Yes, sir, I said so and say so still.

Question. What part of said exhibit was extracted or made out from copies of bills for storage rendered?

Answer. From page No. 1, to No. 21, inclusive; I mean those marked.

Question. Did you yourself make out the original bills against Cross & Co?

Answer. There were no original bills against Cross & Co.

Question. Were the goods stored by Cross & Co. charged the same rates as goods stored by other people during the same period?

Answer. Yes, sir.

The counsel for the United States here closed, and the counsel for claimant again took the witness.

Question. Mr. Lund, you stated that Mr. Clark was the bookkeeper of Cross & Co., and kept all the books, except the storekeeper's books; did not the subject-matter of the storekeeper's books go ultimately into Mr. Clark's books?

Answer. Yes; after the bills were made out and collected the cash went into his books.

Question. You have said also that the account A is made up from the storage books and copies of bills rendered; where are the bills that were actually rendered?

Answer. The original bills were delivered to the parties against whom they were made out; as soon as they were receipted, as a matter of course they kept them.

Question. What kind of copies were those; how were they taken?

Answer. They were press copies; taken by what is known as letter-press.

Question. Does what was taken from these original bills tally with the storage books?

Answer. Yes, sir; so far as the amount of storage shown by bills and the amount of storage on each lot, as per storage books.

Question. Do they differ in any respect from the storage books?

Answer. No, sir.

Question. Does everything that appears in the copies of the bills, from which a portion of A was taken, tally with the storage books?

Answer. Yes, sir.

The counsel for the United States here again took witness.

Question. Who made the letter press copies of the bills from which exhibit A, was in part made up as you have stated?

Answer. The machine made them, and I worked the machine. I made the original bills.

Question. Do you know personally anything in regard to the expenses of receiving and delivering the goods as charged in exhibit A?

Answer. I know that I myself wrote the sixty-two and a half cents in the bill, in the office, and I know from my personal experience that that is a low charge for receiving and delivering goods.

The counsel for claimant again took the witness.

Question. Did Cross & Co., have to pay for the receipt and delivery of goods mentioned in that account?

Answer They did.

Question. Do you know anything else relative to the claim in question?

Answer. No, sir.

HENRY LUND.

STATE OF CALIFORNIA, }  
City and County of San Francisco. }

On this 16th day of July, A. D., 1857, personally came Henry Lund, the witness within named, and after having been first sworn to tell the truth, the whole truth and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Henry Lund, taken at the request of the counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Alexander Cross. The adverse party attended by consent and did not object.

TULLY R. WISE, *Commissioner*.

Fees of witness.....	\$1 50
Commissioner's fees.....	15 00
	<hr/>
	16 50

A.—*Extract from Cross & Co.'s storage books of goods stored in A. Cross' iron warehouse No. 1, from September 1, 1854, to November 14, 1856.*

42

On account of whom.	Description of goods.	Tons.	Amount of storage rec'd.
F. S. Alvarez -----	9,281 bags barley -----	495 $\frac{5}{10}$	\$3,458 12
	743 mats rice -----	54 $\frac{8}{10}$	142 35
	47 mats rice -----	1 $\frac{3}{10}$	5 00
	562 bags walnuts -----	26 $\frac{6}{10}$	198 05
	320 bags paddy -----	23 $\frac{3}{10}$	152 25
	475 packages shot -----	15	11 25
	112 kegs paints -----	3	15 75
	3 casks ink -----	1 $\frac{5}{10}$	6 72
	16 lamps -----	1	4 50
	3 cases lampwicks -----	1	4 50
	81 bales cordage -----	20 $\frac{2}{10}$	106 33
	39 cases China trunks -----	7	43 10
	15 cases cigars -----	5 $\frac{1}{10}$	21 43
	18 cases matches -----	9	52 72
	7 boxes tobacco -----	0 $\frac{5}{10}$	74
	16 cases cigaritos -----	0 $\frac{4}{10}$	60
	5 packages chairs -----	2 $\frac{5}{10}$	22 44
	1 case blankets -----	0 $\frac{2}{10}$	57
	94 cases lard -----	8	36 00
	9 cases sausages -----	1	2 25
	2 cases sarsaparilla -----	0 $\frac{5}{10}$	74
	35 ceroons peaches -----	4	9 00
	3 cases sweetmeats -----	0 $\frac{6}{10}$	2 00
	6 cases hats -----	1 $\frac{9}{10}$	7 25
	30 cases wine -----	1	9 00
	97 cases cordials -----	3	9 00
	29 cases vermouth -----	1 $\frac{3}{10}$	3 00
	17 packages Chili peppers -----	2 $\frac{5}{10}$	5 04
	50 firkins butter -----	5 $\frac{5}{10}$	5 07
	50 firkins butter -----	5 $\frac{5}{10}$	4 37

ALEXANDER CROSS.

	70 cases lard .....	7	13 30
	50 casks hams .....	16 $\frac{9}{10}$	19 16
Jonathan Peel .....	700 bags barley .....	36	39 00
	600 bags barley .....	27 $\frac{7}{10}$	41 00
J. T. Raymond .....	700 bags barley .....	32 $\frac{7}{10}$	24 50
Samuel Price & Co .....	368 half bags flour .....	18 $\frac{4}{10}$	30 19
Grisar, Byrne & Co .....	121 packages salt .....	10	10 00
	4,506 small bags salt .....	22	97 00
	63 cases salt .....	18	59 19
	3,202 small bags salt .....	17 $\frac{6}{10}$	49 47
H. M. Schwabe & Co .....	44 tierces hams .....	14 $\frac{9}{10}$	44 00
E Herrick .....	156 bags wheat .....	7 $\frac{5}{10}$	20 62
Charles Vinzent .....	1,180 bags wheat .....	59 $\frac{7}{10}$	179 25
	631 quarter bags flour .....	15 $\frac{8}{10}$	47 13
	598 quarter bags flour .....	15	37 37
	1,200 quarter bags flour .....	30	75 00
	748 bags wheat .....	36 $\frac{5}{10}$	91 25
	1,241 bags wheat .....	63 $\frac{5}{10}$	158 75
	599 quarter bags flour .....	15	29 94
	1,257 bags wheat .....	64 $\frac{4}{10}$	161 00
	156 quarter bags flour .....	3 $\frac{9}{10}$	9 75
	801 quarter bags flour .....	20	29 98
Cross & Co .....	50 hogsheads ale .....	16 $\frac{7}{10}$	65 75
	70 casks ale, quarts .....	17 $\frac{5}{10}$	25 36
	300 casks porter, pints .....	50	92 34
	50 casks ale, pints .....	8 $\frac{3}{10}$	9 69
	34 casks porter, quarts .....	8 $\frac{5}{10}$	18 62
	121 casks of porter, quarts .....	30 $\frac{9}{10}$	39 31
	40 cases ale, quarts .....	10	14 12
	10 cases ale, quarts .....	2 $\frac{5}{10}$	3 24
	30 hogsheads porter .....	10	75 00
	98 crates crockery .....	98	153 00
	10 bales carpeting .....	5	15 00
	2 bales carpeting .....	1	3 75
		1,512	6,121 17

Amount of gross storage received, (as per accounts attached) -----	\$6,121 17
Less, expenses receiving and delivering 1,512 tons, at \$62 50 per ton.....	945 00
Amount of net storage -----	<u>5,176 00</u>

CROSS &amp; CO.

SAN FRANCISCO, *July 14*, 1857.

## No. 1.

SAN FRANCISCO, *October 2*, 1854.*F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage from September 1 to October 1, on 654 tons goods in one month, at 75 cents.....	<u>\$490 50</u>
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## No. 2.

SAN FRANCISCO, *November 1*, 1854.*F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage on following goods from October 1 to date, at 75 cents per ton :	
Since October 1, delivered $34\frac{1}{2}$ tons.....	\$2 85
This date remaining in store, $635\frac{1}{2}$ tons.....	476 40
	<u>479 25</u>

## No. 3.

SAN FRANCISCO, *December 1*, 1854.*F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage to date on following goods, at 75 cents per ton :	
Since November 1, delivered $39\frac{1}{2}$ tons.....	\$29 40
This date in store, 596 tons.....	447 00
November 3, received $2\frac{1}{2}$ tons.....	1 68
November 24, received $5\frac{3}{8}$ tons }	1 00
November 29, received $5\frac{3}{8}$ tons }	
	<u>479 08</u>



## No. 4.

SAN FRANCISCO, *January 1, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage to date on following goods, at 75 cents per ton:	
Since December 1, 1854, delivered $14\frac{1}{2}$ tons.....	\$11 19
This date in store, 574 tons.....	430 50
December 14, 1854, received 7 tons.....	2 80
December 14, 1854, received $16\frac{2}{3}$ tons.....	6 66
	<hr/>
	451 15
For 3 months' storage on $3\frac{1}{5}$ tons rice, (overweight and not charged in former account).....	9 60
	<hr/>
	460 75
	<hr/> <hr/>

## No. 5.

SAN FRANCISCO, *February 1, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage to date on following goods, at 75 cents per ton:	
Since January 1, delivered 22 tons.....	\$16 50
This date in store, $575\frac{3}{4}$ tons .....	431 81
	<hr/>
	448 31
	<hr/> <hr/>

## No. 6.

SAN FRANCISCO, *March 1, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage to date on following goods, at 75 cents per ton:	
Since February 1, delivered 15 tons .....	\$11 25
This date in store, $560\frac{3}{4}$ tons .....	420 56
	<hr/>
	431 81
	<hr/> <hr/>

## No. 7.

SAN FRANCISCO, *April 1, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage to date on following goods, at 75 cents per ton:	
Since March 1, delivered $33\frac{3}{8}$ tons .....	\$25 37
This date in store $63\frac{3}{4}$ tons .....	47 81
	<hr/>
	73 18
	<hr/> <hr/>

## No. 8.

SAN FRANCISCO, *April 1, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage on barley from March 1 to date :

Say 464 tons, one month, at 75 cents..... \$348 00

## No. 9.

SAN FRANCISCO, *May 1, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage on following goods, from April 1 to date, at 75 cents per ton :

Last month delivered one ton..... \$0 75

This date in store 529 tons..... 396 75397 50

## No. 10.

SAN FRANCISCO, *May 12, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For one month's storage on following goods, from May 1, at 75 cents per ton :

529 tons..... \$396 75

## No. 11.

SAN FRANCISCO, *July 26, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage on goods from June 1 to August 1, at 75 cents per ton per month :

1,281 bags barley,  $41\frac{1}{2}$  tons, two months..... \$66 25

261 bags walnuts, 16 tons, one month..... 12 00

174 bags walnuts,  $11\frac{2}{3}$  tons, one month..... 8 553 casks ink,  $1\frac{1}{2}$  tons, two months..... 2 255 packages chairs,  $2\frac{1}{2}$  tons, two months..... 3 75

30 cases wine, 1 ton, two months..... 1 50

94 30

## No. 12.

SAN FRANCISCO, *August 7, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage on  $31\frac{1}{2}$  tons barley (overweight, and not charged  
in former account) from September 1, 1854, to August 1,  
1855 :

$31\frac{1}{2}$  tons, eleven months, at 75 cents..... \$259 87

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## No. 13.

SAN FRANCISCO, *September 17, 1855.**F. S. Alvarez, Esq., to Cross & Co., Dr.*

For storage on following goods, from August 1, at 75 cents per ton  
per month :

183 bags of walnuts, (delivered August 24,) $11\frac{2}{3}$ tons, 1 month.	\$8 55
3 casks of ink, (delivered August 23,) $1\frac{1}{2}$ tons, 1 month.....	1 12 $\frac{1}{2}$
5 packages of chairs, (delivered August 23,) $2\frac{1}{2}$ tons, 1 month	1 87 $\frac{1}{2}$
30 cases of wine, (delivered August 22,) 1 ton, 1 month.....	75

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12 30

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## No. 14.

SAN FRANCISCO, *September 17, 1855.**Jonathan Peel, Esq., to Cross & Co., Dr.*

For storage on 700 bags of barley, from July 1 :

400 bags, delivered up to August 1, 20 tons in 1 month, at  
75 cents..... \$15 00

300 bags, delivered up to September 1, 16 tons in 2 months,  
at 75 cents..... 24 00

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39 00

For ditto on 600 bags of barley, from August 1, equal to  $27\frac{3}{4}$   
tons, 2 months, at 75 cents..... 41 00

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80 00

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## No. 15.

SAN FRANCISCO, *July 25, 1855.**Messrs. J. P. Raymond & Co., to Cross & Co., Dr.*

For one month storage on 600 bags of barley,  $32\frac{1}{4}$  tons, at  
75 cents..... \$24 50

## No. 16.

SAN FRANCISCO, April 24, 1856.

*Messrs. Samuel Price & Co., to Cross & Co., Dr.*

For storage on 368 half bags of flour, from January 6, 1856:

18 $\frac{8}{20}$ tons, 1 month, at 75 cents.....	\$13 80
16 $\frac{17}{20}$ tons, 1 month, at 50 cents.....	8 42
15 $\frac{19}{20}$ tons, 1 month, at 50 cents.....	7 92
	<hr/>
	30 19
	<hr/> <hr/>

## No. 17.

SAN FRANCISCO, July 26, 1855.

*Messrs. Grisar, Byrne & Co., to Cross & Co., Dr.*

For storage on salt, as follows:

121 packages, received February 20, 10 tons, 1 month, at \$1 .....		\$10 00
4,506 10 pound bags, received February 20, 22 tons, 1 month at \$1.....	\$22 00	
3,978 10 pound bags, from March 20, 20 tons, 5 months, at 75 cents.....	75 00	
	<hr/>	97 00
63 cases, received March 9, 18 tons, 1 month, at \$1 .....	18 00	
58 cases, from April 9, 16 $\frac{3}{4}$ tons, 1 month, at 75 cents .....	12 50	
50 cases, from May 9, 14 $\frac{1}{2}$ tons, 1 month, at 75 cents.....	10 69	
44 cases from June 9, 12 $\frac{1}{2}$ tons, 1 month, at 75 cents.....	9 37 $\frac{1}{2}$	
40 cases, from July 9, 11 $\frac{1}{2}$ tons, 1 month, at 75 cents .....	8 62 $\frac{1}{2}$	
	<hr/>	59 19
3,202 bags, received March 4, 17 $\frac{3}{5}$ tons, 1 month, at \$1.....	17 60	
3,157 bags, from April 4, 16 $\frac{1}{2}$ tons, 2 months, at 75 cents.....	24 75	
1,108 bags, from June 4, 5 $\frac{1}{2}$ tons, 1 month, at 75 cents.....	4 12	
790 bags, from July 4, 4 tons, 1 month, at 75 cents.....	3 00	
	<hr/>	49 47
		<hr/> <hr/>
		215 66

## No. 18.

SAN FRANCISCO, *April 3, 1855.**Messrs. H. M. Schwabe & Co. to Cross & Co., Dr.*

For storage on 44 tierces hams, from date of receipt, January 26, equal to $14\frac{2}{3}$ tons, 3 months, at \$1.....	\$44 00
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## No. 19.

SAN FRANCISCO, *June 18, 1856.**E. Herrick, Esq., to Cross & Co., Dr.*

For storage on 156 bags wheat, from March 10 to April 10, 1 month, on $7\frac{1}{2}$ tons, at 75 cents.....	\$5 62
For storage on 156 bags wheat, from March 10 to July 10, 3 months, on $7\frac{1}{2}$ tons, at 50 cents.....	11 25
	<hr/> 16 87 <hr/>

## No. 20.

SAN FRANCISCO, *August 2, 1856.**Edwin Herrick, Esq., to Cross & Co., Dr.*

For storage on 156 bags wheat, from July 10 to August 1, (delivered,) $7\frac{1}{2}$ tons in 1 month, at 50 cents .....	\$3 75
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## No. 21.

SAN FRANCISCO, *July 9, 1856.**Charles Vincent, Esq., to Cross & Co., Dr.*

For storage as follows:

Susan Abigale, 1,180 bags wheat, from February 8 to March 8, $59\frac{3}{4}$ tons, 1 month, at \$1 .....	\$59 75	
To June 19, $59\frac{3}{4}$ tons, 4 months, at 50 cents.....	119 50	
	<hr/>	\$179 00
631 quarter bags of flour, from February 8 to March 8, $15\frac{1}{10}$ tons, 1 month at \$1.....	15 77	
To June 20, $15\frac{1}{10}$ tons, 4 months, at 50 cents.....	31 36	
	<hr/>	47 13
Mathew Wassar, 598 quarter bags of flour, from February 18 to March 18, $14\frac{3}{10}$ tons, 1 month, at \$1 .....	14 95	
To June 16, $14\frac{3}{10}$ tons, 3 months, at 50 cents.....	22 42	
	<hr/>	37 37

Ocean Bird, 1,200 quarter bags of flour, from February 25 to March 25, 30 tons, 1 month, at \$1..	\$30 00	
To June 20, 30 tons, 3 months, at 50 cents.....	45 00	\$75 00
748 bags of wheat, from February 25 to March 25, 36½ tons, 1 month, at \$1.....	36 50	
To June 19, 36½ tons, 3 months, at 50 cents.....	54 75	91 25
Nahumkeag, 1,241 bags of wheat, from March 10 to April 10, 63½ tons, 1 month, at \$1.....	63 50	
To June 24, 63½ tons, 3 months, at 50 cents.....	95 25	158 75
Francisco, 599 quarter bags of flour, from March 15 to April 15, 14¾ tons, 1 month, at \$1.....	14 97	
To June 16, 14¾ tons, 2 months, at 50 cents.....	14 97	29 94
Desdemona, 1,257 bags of wheat, from March 12 to April 12, 64¼ tons, 1 month, at \$1.....	64 40	
To July 7, 64¼ tons, 3 months, at 50 cents.....	96 60	161 00
156 quarter bags of flour, from March 12 to April 12, 3⅞ tons, 1 month at \$1.....	3 90	
To June 26, 3⅞ tons, 3 months, at 50 cents.....	5 85	9 75
Whiting, 801 quarter bags of flour, from May 5 to June 5, 20¼ tons, 1 month, at \$1.....	20 02	
To July 7, 19¾ tons, 1 month at 50 cents. ....	9 96	29 98
		819 42

## No. 22.

SAN FRANCISCO, April 26, 1855.

*Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on fifty hogsheads ale, from October 13, 1854 :	
To December 13, 1854, 50 hogsheads, 16¾ tons, 2 months, at 75 cents .....	\$25 00
To January 13, 1855, 49 hogsheads, 16½ tons, 1 month, at 75 cents .....	12 25
To February 13, 1855, 48 hogsheads, 16 tons, 1 month, at 75 cents.....	12 00
To April 13, 1855, 29 hogsheads, 9¾ tons, 2 months, at 75 cents.....	14 50
To date, 8 hogsheads, 2¾ tons, 1 month, at 75 cents. ....	2 00
	65 75



## No. 23.

SAN FRANCISCO, May 22, 1855.

*Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on 70 casks ale, each 6 dozen quarts :	
From February 14 to March 14, 70 casks, $17\frac{1}{2}$ tons, 1 month, at 75 cents .....	\$13 12
To April 14, 60 casks, 15 tons, 1 month, at 50 cents.....	7 50
To May 14, 37 casks, $9\frac{1}{4}$ tons, 1 month, at 50 cents .....	4 62
To date, 1 cask, $\frac{1}{4}$ ton, 1 month, at 50 cents.....	12
	<hr/>
	25 36
	<hr/>

## No 24.

SAN FRANCISCO, June 19, 1855.

*Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on beer, as follows :

*Three Hundred Casks of Porter—Pints.*

From February 3, to March 3, 300 casks, 50 tons, one month, at 75 cents.....	\$37 50
To April 3, 237 casks, $39\frac{1}{2}$ tons, one month, at 50 cents.....	19 75
To May 3, 215 casks, $35\frac{5}{8}$ tons, one month, at 50 cents.....	17 92
To June 3, 143 casks, $25\frac{5}{8}$ tons, one month at 50 cents.....	11 92
To date, 63 casks, $10\frac{1}{2}$ tons, one month, at 50 cents	25
	<hr/>
	\$92 34

*Fifty Casks of Ale—Pints.*

To March 3, 50 casks, $8\frac{1}{3}$ tons, one month, at 75 cents.....	\$6 28
To May 3, 17 casks, $2\frac{5}{8}$ tons, two months, at 50 cents.....	2 83
To June 3, 7 casks, $1\frac{1}{3}$ tons, one month, at 50 cents	58
	<hr/>
	9 69

*Thirty-four Casks of Porter—Quarts.*

To March 3, 34 casks, $8\frac{1}{2}$ tons, one month, at 75 cents.....	\$6 37
To May 3, 34 casks, $8\frac{1}{2}$ tons, two months at 50 cents.....	8 50
To June 3, 18 casks, $4\frac{1}{2}$ tons, one month, at 50 cents.....	2 25
To date, 12 casks, 3 tons, one month, at 50 cents..	1 50
	<hr/>
	18 62

*One Hundred and Twenty-one Casks of Porter—Quarts.*

To March 3, 121 casks, $30\frac{1}{4}$ tons, one month, at 75 cents.....	\$22 69	
To April 3, 107 casks, $26\frac{3}{4}$ tons, one month, at 50 cents.....	13 37	
To May 3, 26 casks, $6\frac{1}{2}$ tons, one month, at 50 cents.....	3 25	
	<hr/>	\$39 31

*Forty Cases of Ale—Quarts.*

To March 3, 40 cases, 10 tons, one month, at 75 cents.....	7 50	
To April 3, 40 cases, 10 tons, one month, at 50 cents.....	5 00	
To May 3, 13 cases, $3\frac{1}{4}$ tons, one month, at 50 cents.....	1 62	
	<hr/>	14 12

*Ten Cases of Ale—Quarts.*

To March 3, 10 cases, $2\frac{1}{2}$ tons, one month, at 75 cents.....	1 87	
To April 3, 7 cases, $1\frac{3}{4}$ tons, one month, at 50 cents.....	87	
To May 3, 4 cases, 1 ton, one month, at 50 cents...	50	
	<hr/>	3 24
		<hr/>
		177 32
		<hr/>

No. 25.

SAN FRANCISCO, *August 10, 1855.**Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on 30 hogsheads porter, from October 13, 1854, to date; equal to 10 tons, 10 months, at 75 cents per ton.....	\$75 00
	<hr/>

No. 26.

SAN FRANCISCO, *August 10, 1855.**Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on 98 crates crockery, from May 5, 1855, to June 5, 98 tons, 1 month, at 75 cents per ton.....	\$73 50
To July 5, 88 tons, 1 month, at 50 cents per ton.....	44 00
To August 5, 71 tons, 1 month, at 50 cents per ton.....	35 50
	<hr/>
	153 00
	<hr/>

## No. 27.

SAN FRANCISCO, November 14, 1856.

*Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on 10 bales carpeting, from January 17, to February 17, 10 bales, 5 tons, 1 month, at 75 cents per ton.	\$3 75
To May 17, 7 bales, 3½ tons, 3 months, at 50 cents per ton.	5 25
To date, 4 bales, 2 tons, 6 months, at 50 cents per ton.	6 00
	<hr/>
	15 00
	<hr/>

## No. 28.

SAN FRANCISCO, November 14, 1856.

*Messrs. Cross & Co. to Cross & Co., Dr.*

For storage on 2 bales carpeting from April 15 to date:	
To May 15, 2 bales, 1 ton, 1 month, at 75 cents per ton.	\$0 75
To date, 2 bales, 1 ton, 6 months, at 50 cents per ton.....	3 00
	<hr/>
	3 75
	<hr/>

*Amount of storage received by Cross & Co. on goods stored in A. Cross' iron warehouse No. 1, from 1st September, 1854, to 14th November, 1856, as per accounts attached.*

Account No. 1.....	\$490 50	Brought up.....	\$4,451 60
No. 2.....	479 25	Account No. 15.....	24 50
No. 3.....	479 08	No. 16.....	30 19
No. 4.....	460 79	No. 17.....	215 66
No. 5.....	448 31	No. 18.....	44 00
No. 6.....	431 81	No. 19.....	16 87
No. 7.....	73 18	No. 20.....	3 75
No. 8.....	348 00	No. 21.....	819 42
No. 9.....	397 50	No. 22.....	65 75
No. 10.....	396 75	No. 23.....	25 36
No. 11.....	94 30	No. 24.....	177 32
No. 12.....	259 87	No. 25.....	75 00
No. 13.....	12 30	No. 26.....	153 00
No. 14.....	80 00	No. 27.....	15 00
		No. 28.....	3 75
Carried up.....	4,451 60		
Amount of gross storage received (as per extract from storage books attached)...			6,121 17
Less: Expenses receiving and delivering 1,512 tons, (do ,) at 62½ cents.....			945 00
Amount of net storage .....			5,176 00

STATE OF CALIFORNIA, }  
*City and County of San Francisco,* } ss.

On this 29th day of December, A. D. 1857, personally came before me Richard P. Hammond, who, having been first sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does, upon his oath, depose and say, that his name is Richard P. Hammond; that he is a surveyor; that he is thirty-seven years of age; that he has resided in San Francisco during the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. What was your occupation in August, 1853?

Answer. I was collector of the customs in the district of San Francisco, California.

Question. Do you recollect a warehouse of Mr. Alexander Cross, leased to the government as a bonded warehouse?

Answer. Yes, sir. The warehouse had been leased to the government by Danial Saffarans, and Mr. Cross was assignee of Mr. Saffarans.

Question. Did you, as collector of the port, give notice to Mr. Cross that the government intended to abandon the lease of that warehouse?

Answer. I did, in my official capacity as collector of the customs of San Francisco, notify Mr. Cross in writing that the government intended to abandon that warehouse on a certain date, and would cease to pay rent for the house after that time; this written notice was served on Mr. Cross on the 13th of August, 1853.

Question. Did you receive from Mr. Cross any reply to that notice, and if so state whether it was in writing or verbal?

Answer. I did receive from Mr. Cross a written reply to my written notification upon the same date on which that notification was served upon him.

Question. Have you that written reply in your possession?

Answer. I have not. It was a public paper, and was either sent to the Secretary of the Treasury or filed with other public papers in the appropriate archives of the custom-house.

Question. Can you state the tenor of that reply; and if so please state it?

NOTE.—The counsel for the United States objects to the question on the ground that the original reply has not been shown to be lost or out of the power of the claimant to produce.

Answer. The purport of Mr. Cross' reply was to the effect that he did not think the government had any right to abandon his warehouse, and that he should still continue to expect rent for it, and to regard it as rented to the government.

Question. Will you look at the paper now shown you, and marked Exhibit A, and state whether that is the written reply sent to you by Mr. Cross, or a copy of it?

NOTE.—The counsel for the United States objects to the question as leading.

Answer. I have no means of swearing positively that this is a copy of the letter to which I refer. In substance it is the same as the reply

of Mr. Cross, alluded to above, and I have no reason to believe it is not an exact copy of that original. I have been shown Exhibit A for the first time, purporting to be a press copy of that letter; in reading it over I find the letter to which it purports to be a reply was dated August 4; my impression is that that letter could not have been delivered to Mr. Cross before the 13th of August, for the reason that the warehouse to which the goods from Cross' warehouse were removed was being built, and it was uncertain when it could be occupied. I only gave the notice when I was ready to remove the goods.

Question Did you receive more than one letter from Mr. Cross in reply to the notice you gave him of the intention of the government to abandon his warehouse?

Answer. But one.

The counsel for the claimant here closed, and counsel for the United States took the witness.

Question. Have you any recollection of having seen said reply of Cross since the time you say it was delivered to you?

Answer. None at all. I have no recollection of having seen it since. I have no knowledge of where it is. In the month of April or May, 1855, I received from the Secretary of the Treasury a communication inquiring what had been done in respect to the warehouse in question, under his instructions to me of April, 1853; this letter caused me then to review the whole matter in my reply, and I remember to have stated to the Secretary, in that answer, that the warehouse in question had been abandoned, in pursuance of his instructions, on the 13th of August, 1853, and against the protest of Mr. Cross to such abandonment. I also looked over the papers that were in my office to search for the protest, and examined my letter book of correspondence with the department to ascertain if it had been sent there. I could not find the protest at all after making a diligent search for it, nor could I find any record of its having been forwarded to the department at Washington. I could only account, however, for its absence from my files upon the supposition that it had been forwarded to the department with a previous letter upon the subject of this warehouse, dated August 15, 1853. This last named letter and the letter above referred to from myself to the Secretary, in reply to his in the spring of 1855, comprised the whole correspondence between the department and myself upon this subject.

Question. When original letters were forwarded from the custom-house, at San Francisco, to the Department of the Treasury, at Washington, were not copies of them preserved in the custom-house at San Francisco?

Answer. That depended upon the subject matter of the letter; if they were about matters of which the Secretary had exclusive control, and about which I expected to have nothing to do again, I kept no copies, otherwise generally sent copies and not originals.

Question. Whilst you were collector did you allow letters and other documents relating to the business of the collector's office to be taken from that office?

Answer. By no one save myself. I frequently took letters from the Secretary of the Treasury to my house to reply to them there. The

custom-house has been twice moved since that letter was written, and both times in a hurry. One removal was made whilst I was in office, and I, subsequent to that removal, missed letters from my file of the Secretary's correspondence, and had to write to Washington for other copies.

Question. Did you ever examine your private papers to see whether this reply had got amongst them?

Answer. I did, several months since, at the request of Mr. Clark. I could find nothing of it.

Question. Do you know anything else relative to the claim in question; if you do, please state it?

Answer. I do not know anything else.

RICHARD P. HAMMOND.

STATE OF CALIFORNIA, }  
City and county of San Francisco, } ss.

On this 29th day of December, A. D. 1857, personally came Richard P. Hammond, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Richard P. Hammond, taken at the request of Mr. Emmet, counsel for claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Alexander Cross.

J. B. Townsend attended on behalf of the United States, as counsel, and did not object.

TULLY R. WISE,  
Commissioner.

Commissioner's fees, \$8.

STATE OF NEW YORK, }  
City and County of New York, } ss.

On this sixteenth day of July, eighteen hundred and fifty-seven, personally came Thomas Butler King, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Thomas Butler King, taken at the request of Samuel F. Vinton, esq., to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Alexander Cross. The adverse party was not notified, did not attend, and did not object.

G. R. J. BOWDOIN,  
Commissioner of Court of Claims.



## IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

*Deposition of Thomas Butler King, a witness examined in this cause on the part of the claimant, at the city of New York, the sixteenth day of July, eighteen hundred and fifty-seven.*

Question. What is your name, occupation, age, and place of residence, and what has been your place of residence for the past year? Have you any interest, direct or indirect, in the claim which is the subject of inquiry in this action? Are you related to the claimant; and if yea, in what degree?

Answer. Thomas Butler King; am a cotton planter; fifty-three years of age. My residence is in Glynn county, Georgia. I have been travelling for most of the past year. I have no interest whatever in the claim which is the subject of inquiry in this action. Am not, in any degree whatever, related to the claimant.

Question. Please state whether you lately held the office of collector of the port of San Francisco, and when did you arrive at the port of San Francisco and take charge of the collector's office?

Answer. I was appointed collector of the port of San Francisco in October, 1850. I arrived at the port of San Francisco early in January, 1851, and took charge of the custom-house and entered upon my duties, as nearly as my recollection serves me, about the fourteenth or fifteenth of January, 1851.

Question. Did you, after your arrival at San Francisco, examine the warehouse which was the subject of the contract of the eleventh of November, 1850, between you, as collector of the port of San Francisco, on the part of the United States, of the one part, and Daniel Saffarans of the other part; and if so, did you, as such collector, accept said warehouse as being substantially of the character, description, and dimensions required by the stipulations of an article of agreement for the erection of said warehouse entered into between the said Saffarans, of the one part, and James Collier, as collector of said port of San Francisco, of the other part?

Answer. Yes, I did examine the warehouse which was the subject of that contract of the eleventh of November, 1850. I did, as such collector, accept the warehouse referred to in this interrogatory as being substantially in compliance with said contract, and continued to occupy it as a government warehouse.

Question. Did you endorse your acceptance on a copy of the contract above referred to; and if so, please state at what time, according to the best of your recollection, the endorsement was made?

Answer. Some seven or eight months after I entered upon the performance of my duties as collector, and on Mr. Cross becoming the assignee of the lease above referred to, I endorsed my acceptance of the building on the contract of lease, to take effect from the fourteenth of January, 1851, and I believe that copy exhibit No. 7, on the six-

teenth page of the printed petition in this case, is a true copy of said endorsement.

Question. Do you know of any other matter relative to the claim in question in this action? If yea, state it.

Answer. Nothing occurs to me.

T. BUTLER KING.

Subscribed in my presence, and sworn to before me, this 16th day of July, 1857.

G. R. J. BOWDOIN,  
*Commissioner of Court of Claims.*

STATE OF CALIFORNIA, }  
*City and County of San Francisco,* } ss.

On this 29th day of December, A. D. 1857, personally came before me Joseph Clark, who, having been first sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does upon his oath depose and say: That his name is Joseph Clark; that he is a commission merchant; that he is thirty years of age; that he has resided at San Francisco during the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. What was your occupation in August, 1853?

Answer. Book-keeper and cashier for Cross & Co.

Question. Do you recollect that Mr. Cross was notified that the government intended to abandon the lease of his warehouse; and if so, how was that notice communicated to him, and by whom, and when?

Answer. I do remember; he was notified in writing, by Richard P. Hammond, who was then collector of the customs at the port of San Francisco. The notification was received in August, 1853, on or before the 13th.

Question. Did Mr. Cross reply to that notice?

Answer. He did, in writing, to the said collector, Richard P. Hammond.

Question. Look at the paper now shown you, and marked exhibit A, and state whether you have ever seen it before, and what it is?

Answer. I have seen it before; it is a press copy of the letter written by me and signed by Mr. Cross, which was sent to Collector Hammond. I am not positive, but my impression is that I delivered the letter myself to the collector or his private secretary.

Question. Was that the letter that was sent in reply to the notification of which you have previously spoken?

NOTE.—Counsel for the United States objects to the question as leading.

Answer. Yes; it was.

The counsel for claimant here closed, and the counsel for the United States took the witness.

Question. Why do you think that you yourself delivered the letter which you have mentioned to the collector or his private secretary?

Answer. Because I, in general, attended to all of Cross & Co.'s custom-house business.

Question. Is that the only reason that you think so?

Answer. I have a slight recollection at the time of having taken this letter to the collector's office and of having had some conversation with him on the subject.

Question. Who was the collector's private secretary at that time?

Answer. Cyril A. Grey.

Question. Do you know what has become of the original of exhibit A, other than what you have stated?

Answer. No, sir.

The counsel for the United States here closed, and the counsel for the claimant took the witness.

Question. Do you know who made that press copy marked exhibit A, and if so state it?

Answer. I do; I did it.

Question. Do you know anything else relative to the claim in question, if you do please state it?

Answer. I know nothing more about it.

JOS. CLARK.

STATE OF CALIFORNIA,  
City and County of San Francisco, } ss.

On this 29th day of December, A. D. 1857, personally came Joseph Clark, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Joseph Clark, taken at the request of Mr. Emmet, counsel for claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Alexander Cross. J. B. Townsend, esq., attended as counsel for the United States and did not object.

TULLY R. WISE,  
Commissioner.

Commissioner's fees, \$7.

STATE OF CALIFORNIA,  
City and County of San Francisco, } ss.

On this third day of August, 1857, personally came before me Ira P. Rankin, who, having been first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does, upon his oath, depose and say: That his name is Ira P. Rankin; that he is a merchant; that he is forty years of age; that he has resided in the

city of San Francisco during the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. How long have you resided and done business in the city of San Francisco as a merchant?

Answer. Five years last past in June last.

Question. Have you, during that time, owned or occupied a warehouse in the city of San Francisco? And if so, have you received goods on storage therein, or stored goods in other warehouses in said city?—I mean within the period from September 1, 1854, to November 14, 1856?

Answer. During all the period from September 1, 1854, to November 14, 1856, I have both owned and occupied a warehouse; I held many consigned goods on storage—goods consigned to me; I did not make a business of receiving goods on storage; such as I had were received incidentally, rather than as a matter of regular business. I bought my warehouse in April, 1854, and there were then some six hundred tons of goods in it on storage, and they remained until they were drawn out, some of them after a lapse of a year or more; and, during the same time, I was having many goods stored in other warehouses.

Question. Do you know the prices of storage of goods in the city of San Francisco, in free warehouses, on the 1st of September, 1854, to the 14th of November, 1856? If so, please state what were the average prices in such warehouses, during said period, in said city.

Answer. I should say that it would be impossible to fix any regular price, the rates varying with the position and security of the warehouse, the responsibility of its managers, and their anxiety to get business. I should think, however, that for a year succeeding the 1st of September, 1854, there was not a great deal of storage taken in first class warehouses below one dollar a ton. Some, undoubtedly, was taken lower than that. In the fall of 1854 I remember to have procured storage for one parcel of goods for seventy-five (75) cents a ton a month. I also had one small parcel in my own warehouse received at seventy-five (75) cents a ton a month. With these exceptions I neither received or paid, according to my recollection, less than one dollar a ton per month, until after the middle of the year 1855.

NOTE.—The counsel for claimant objects to testimony of rates of storage in individual and particular cases, in response to the foregoing question.

Answer continued. I should say I had a good deal of merchandise, from September 1, 1854, to middle of 1855, in my warehouse—consigned goods—consigned to me as storage, for which I was charging one dollar and a quarter a ton per month; but I would not consider that as fixing the current rate of storage in the market, for the reason that commission merchants owning warehouses are accustomed to consider storage in part one of the perquisites of business. I should think, from my knowledge of storage business in San Francisco, from the middle of 1855 to November 14, 1856, that a fair average rate in first class warehouses was about seventy-five cents a ton per month; though I think it is true that, during the whole of the year 1856,

some of the large warehouses were receiving storage at as low a rate as fifty cents a ton per month.

Question. At what price were the goods stored in your warehouse when you purchased it in April, 1854?

NOTE.—The counsel for claimant objects to the question, because it is not comprehended within the period embraced in this case; and next because it is testimony as to a particular case or instance of storage.

The counsel for the United States withdraws the question.

Question. Were you or your firm, during the period from September 1, 1854, to November 14, 1856, extensively engaged in mercantile business in San Francisco, and familiar with the rates and prices of storage in said city?

Answer. I was engaged to a considerable extent in mercantile business here, and supposed to be reasonably well informed in regard to the general rates of storage, though I do not pretend to be an expert.

Question. What was the average expense of receiving and delivering goods taken on storage in said city, during the same period above mentioned, to wit: From September 1, 1854, to November 14, 1856; I mean such a warehouse as the one in question, if you know?

Answer. I know the warehouse in question; I never have taken any precise account of receiving or delivering merchandise in my own warehouse, but have made rough estimates of these expenses; the expense in any warehouse would depend a good deal upon the extent to which the storage business was carried on; whether largely enough to employ a number of experienced laborers constantly at low wages, or in so moderate a way as to require the employment of transient labor at much higher rates; I am inclined to think that fifty cents a ton would not be far from the expense of receiving and delivering merchandise, in and from such a storehouse as that of Cross & Co.; in this estimate, including only the labor, and making no allowance for the warehouse clerk, I mean this for the whole period; it would not vary much; I had in my mind an average business, where the warehouse was kept tolerably well filled, neither a very small or a very large one, when I named fifty cents a ton as a fair price.

Question. Would it or not make the average expense less if the person who occupied the warehouse in question at the same time occupied two or three other warehouses for storage, adjoining it?

NOTE.—The counsel for claimant objected to the question, because the hypothesis is not correct in point of fact, and the question is irrelevant.

Answer. Probably it would make the expense less, because they would be enabled to distribute their labor to better advantage.

The counsel for the United States here closes his direct examination, and the counsel for claimant does not desire to cross-examine the witness.

Question. Do you know any other matter relative to the claim in question; if you do, state it?

Answer. Nothing at all, sir.

IRA P. RANKIN.

STATE OF CALIFORNIA,  
*City and County of San Francisco,* } ss.

On the first day of August, A. D. 1857, the commissioner was requested to take the deposition of the above witness, but he did not make his appearance, and we adjourned till the third, and on the third personally came Ira P. Rankin, the witness within named, who, having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Ira P. Rankin, taken at the request of Mr. Townsend, counsel for the United States, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Alexander Cross.. The adverse party attended by consent, by his attorney, Mr. Emmett, and he did not object.

TULLY R. WISE,  
*Commissioner.*

Commissioner's fees \$9 10

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No. 6.

STATE OF CALIFORNIA,  
*City and county of San Francisco,* } ss.

On this 5th day of August, A. D. 1857, personally came before me F. MacCrellish, who, having been first duly sworn, according to law, to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does, upon his oath, depose and say: That his name is Frederick MacCrellish; that he is a newspaper publisher; that he is between twenty-seven and twenty-eight years of age; that he has resided in San Francisco during the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. How long have you resided in San Francisco?

Answer. Five years last past, with an exception of an absence of three months in the east.

Question. Have you been engaged in the commercial or storage business in San Francisco since your residence here?

Answer. I have.

Question. Do you know the warehouse built by Alexander Cross, under contract with the United States, for a bonded warehouse, on Battery street, in San Francisco?

Answer. I know the building in question. I know it was used for a bonded warehouse by the government of the United States. I do not know anything of his building it by contract.



Question. Can you state the average prices of storage in such warehouse in the city of San Francisco on the 1st of September, 1854, to the 14th of November, 1856? If so, please state them.

Answer. I can only answer for one year to my own knowledge, from my experience in that business. I know from the 1st of September, 1854, to about October, 1855, the average prices, for I was in the business during that period. From the first part of that period it was about one dollar a ton a month; and the last part of the period the price had declined to about seventy-five cents or eighty-seven cents. During that period there were others getting more than I was. Then, again, there was other class of storage that we got three dollars and a quarter a ton a month for, including drayage.

Question. Was the building you occupied a large or small one?

Answer. Its capacity was about seven thousand tons, which was the largest warehouse then in San Francisco; and I had more storage, I think, than any other building in San Francisco.

Question. Do you know the average price of storage during the latter part of the period above mentioned, to wit: from September, 1855, to November 14, 1856, in such warehouses as the one in question, in San Francisco?

Answer. I was commercial editor and reporter of the Alta California newspaper during that time, and as such I had a very good idea, I think, of the price of storage; I reported the prices of articles but not of storage. I went to these places every day of my life, except Sundays. Some persons get as high as a dollar a ton a month, and it ranged from that down to fifty (50) cents a ton a month.

Question. What was the expense, if you know, of receiving and delivering goods as storage in such warehouses as the one in question during the above period; that is, from the 1st of September, 1854, to November 14, 1856?

Answer. I cannot answer definitely, because I do not know the price in that building. The first part, I should say it would not be less than eighty-seven and a half cents, and the latter part of the period it ought to have been a little less; I cannot say that it was; the wages of people were pretty much the same thing. I had rather not answer that question, because I may be entirely wrong as to a building like that. I never had anything to do with a building like that.

Question. What rent would the building in question have brought, or, in other words, at what sum could it have been rented from the 1st of September, 1854, to the 1st of September, 1855?

NOTE.—The counsel for claimant objects to the question, until it is first shown that the witness is an expert upon that subject.

The counsel for United States waives the question for the present.

Question. Do you know the current rate of rents of such buildings as the one in question, in the city of San Francisco, from the 1st of September, 1854, to the 1st of September, 1855?

Answer. No; but I do know the current rates of rent of such buildings in that locality, I mean of fire-proof buildings. I was doing

business within a block of there and passed by every day except Sunday, and knew the prices that were paid in that vicinity.

Question. Please state what were the current rates of rents of such warehouses in that vicinity during the period just mentioned?

NOTE.—The counsel for claimant objects, first, because the question is irrelevant, the building not being let at all during that period; and in the next place because the rent should not be estimated upon it as if it were a warehouse.

Answer. There were buildings about that size, during the first part of that period, about the first of September, 1854, that rented for about five hundred dollars a month; you may say for the first twelve months I paid for my building four thousand dollars a month. I paid after that, that is from the 1st September, 1855, to October, 1856, two hundred and fifty dollars per month for a smaller building. I would freely have given three hundred and fifty dollars per month for that building, the one in question, and probably more. I have made a mistake in time. I mean from 1st September, 1855, to October, of the same year, and not of 1856.

Question. Was there, in your opinion, any difficulty in letting the building in question at the prices you have mentioned during those periods?

Answer. From July, 1854, to October, 1855, I should think it could have been let at these prices, that is, during the period at 1st September, 1854, it would have commanded five hundred dollars a month easily, but I can't say how long it would have commanded these prices. On the first of September, 1855, I would have given three hundred and fifty dollars a month for it myself.

Question. Did you make application to rent the building in question at that time?

Answer. I don't recollect positively whether I did or not.

The counsel for the United States here closed, and counsel for claimant takes the witness.

Question. Will you explain the reason why some goods commanded three dollars and a quarter a ton, whilst the average price of storage at that time was a dollar?

Answer. All goods coming from ships on which the freight was not paid were charged three dollars and twenty-five cents.

Question. Will you state whether that price of three dollars and twenty-five cents a ton had anything to do with the average price of storage at that time?

Answer. That only applies to the kind of goods I have mentioned and did not apply to the ordinary rates of storage.

Question. When you say that such a store as Mr. Cross' could have commanded five hundred dollars rent, do you mean to say that you know of any persons that were ready to take the building at that rent?

Answer. I don't know of any persons that applied or wanted the building or store, except myself, for the period I have mentioned. In the latter part of 1854 I don't think there could have been any difficulty at all in letting it for five hundred dollars a month.

Question. Do you mean to say that in the latter part of 1854 you knew of any person who was willing to take it for that price?

Answer. No.

Question. During any period between September, 1854, and 14th November, 1856, were you engaged in the real estate business?

Answer. No, sir.

Question. You stated in your direct examination that you do not particularly recollect whether you applied to Mr. Cross to rent that building; have you any idea that you ever did apply?

Answer. I was looking for a building about that time, and the probabilities are I made application for it; but I cannot say I did; I found a building across the street from where I was, which I took.

Question. Do you recollect of ever having spoken to Mr. Cross about it?

Answer. My impression is that I did; but I can't speak positively.

Question. Have you any impression that you spoke to Mr. Cross, Mr. Clark, or any one else in Cross & Co's establishment?

Answer. It was one of the firm, or some one in their employ; it may have been Mr. Clark.

Question. Do you now say that you ever did speak to any one of them?

Answer. At that particular period of time my impression is I spoke as I said before, but previous to September, 1855, I had frequently spoken with Mr. Cross about the building. I want a distinction drawn between my impression and positive knowledge. I had often told Mr. Cross if I left the building I was in I should probably want a building from him; that was previous to September, 1855.

The counsel for claimant here closed.

Question. Do you know anything else relative to the claim in question; if you do, state?

Answer. I do not.

FREDERICK MACCRELISH.

STATE OF CALIFORNIA, }  
City and County of San Francisco, } ss.

On the 5th day of August, A. D. 1857, personally came Frederick MacCrelish, the within named witness, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers which were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Frederick MacCrelish, taken at the request of J. B. Townsend, counsel for the United States, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Alexander Cross. The following and accompanying notification was handed to the commissioner, and Mr. Emmet appeared for the claimant, and did not object.

TULLY R. WISE, *Commissioner*.

Commissioner's fees, \$7 50.

Rep. C. C. 198—5

## IN THE UNITED STATES COURT OF CLAIMS.

ALEXANDER CROSS *vs.* UNITED STATES.

The above named Alexander Cross will please take notice that on Saturday the 1st day of August, A. D. 1857, at 11 o'clock a. m. of said day, the depositions of Ira P. Rankin, L. P. Sage, Frederick Griffin, Daniel Flint, and Frederick MacCrelish will be taken in said cause on behalf of said United States before Tully R. Wise, United States Commissioner of said Court, at his office in the "Merchant's Exchange," corner Washington and Battery streets in the city of San Francisco, and that the taking of said depositions if not completed on that day, will be continued by adjournment from day to day thereafter until completed.

JAMES B. TOWNSEND,  
*Solicitor on behalf of the United States.*

SAN FRANCISCO, *July 30, 1857.*

I acknowledge receipt of a copy of the foregoing notice and do not object to the time.

C. TEMPLE EMMET,  
*Attorney for Alexander Cross.*

JULY 30, 1857.

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STATE OF CALIFORNIA, }  
*City and County of San Francisco,* } *ss.*

On this 17th day of July, A. D. 1857, personally came before me Joseph Clark, who, having been first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does upon his oath say, that his name is Joseph Clark; that he is a commission merchant; that he is thirty years of age; that he has resided in San Francisco during the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. What was your occupation August 13, 1853?

Answer. I was bookkeeper for Cross & Co.

Question. State when you first went into the employment of Cross & Co., and how long you continued so?

Answer. I first went into their employment on the 22d June, 1852, and was in their employment until the 30th of June, 1856, as bookkeeper and cashier.

Question. Since June 30, 1856, what has been your occupation to the present time?

Answer. I have been a partner in the house of Cross & Co.

Question. During the time you have been connected with the house of Cross & Co., either as bookkeeper or partner, what has been the principal business of that house?

Answer. Commission business.

NOTE.—The counsel for the United States objects to the competency of this witness to give testimony by reason of interest, which he claims is apparent upon the foregoing examination.

Question. Has the house or firm of Cross & Co.. of which you are a member, any interest in this claim, or in the property in question in this suit?

Answer. None whatever.

Question. Are you a partner of Mr. Alexander Cross in his general transactions?

Answer. I am a partner of Mr. Alexander Cross, so far as his commission business is concerned, in San Francisco?

Question. Do you know the property in question?

Answer. I do.

Question. Will you state what use that property has been put to from August 13, 1853, to November 14, 1856?

Answer. From August 13, 1853, to the 1st of September, 1853, it was empty; and from the 1st of September, 1853, to 1st of September, 1854, the entire building was rented to Francisco Salvador Alvarez; from 1st of September, 1854, to 10th of August, 1855, the building was used for storage by Cross & Co.; from the 10th of August, 1855, up to the beginning of this year, March, I think it was, 1857, J. J. Southgate & Co. had about three-fourths of the first floor, the ground floor; the balance of the building was used for storage by Cross & Co.

Question. When you say, used for storage by Cross & Co., do you mean that the building was used for storage of the goods of Cross & Co. exclusively?

Answer. No, sir; we would receive goods on storage from any third party, and we did receive goods from any party.

Question. State, if you please, Mr. Clark, what rent Mr. Alvarez paid for that building during the time he occupied it, as you have testified?

Answer. Nine thousand dollars, or seven hundred and fifty dollars a month.

Question. Was that the rate of rent at which it was leased to Mr. Alvarez?

Answer. Yes, sir.

Question. Was that a fair rate of rent at the time it was leased to Mr. Alvarez?

Answer. I consider it a very fair rent.

Question. Has Mr. Cross any other buildings like the one in question, and had he at that time?

Answer. He had two others at that time, exactly the same, adjoining; whether he has them now or not I do not know; he may have sold them since I have heard from him.

Question. Will you state now whether at the time the building in question was rented to Mr. Alvarez, as you have testified, either of the others was rented to any tenant; and if so, at what rate?

Answer. One of the other buildings, the entire building, was rented to Samuel Price & Co., from the 14th day of August, 1854, to the 14th day of May, 1855, at a monthly rent of five hundred dollars.



Question. State what rent Mr. Southgate & Co. paid at the time they occupied a portion of the ground floor, as you have testified?

Answer. One hundred dollars a month.

Question. Was that a fair rent during that time?

Answer. I think so.

Question. During the time you have testified that storage was received in this building, who was the storekeeper who superintended the storage?

Answer. Henry Lund.

Question. State, sir, what were his general duties as storekeeper?

Answer. Receiving and delivering goods; that is, giving receipts and taking receipts for goods, keeping the storage-books, and making out storage accounts, delivering the accounts, and receiving the money.

Question. During that period of which you have spoken, did any one else perform that duty besides Mr. Lund?

Answer. Not in a general way; Mr. Lund might be out delivering accounts and perhaps I might deliver a few packages and take receipts for them during his absence.

Question. Was the use which you have spoken of to which the building in question was devoted during that period, the only use to which it was devoted during that period; or in other words, was that building devoted to any other purpose than what you have testified, from August 13, 1853, to November 14, 1856?

Answer. No, sir; it was devoted to no other purpose.

Question. Can you state what were the rates of storage during the time you have testified that storage was received in that building?

Answer. It varies now, and it varied then, according to the number of tons put in at once by one man, from fifty cents to a dollar per ton per month.

The counsel for claimant here closed his examination, and the counsel for the United States commenced his cross-examination.

Question. Where does Alexander Cross, the claimant, now live?

Answer. On the 13th day of June last he was living at Valparaiso, Chile; no the 30th of May was the last date from there.

Question. Has he ever resided in San Francisco, California?

Answer. Yes, sir.

Question. During what time?

Answer. I knew him to reside here in 1851, and he left in July, 1856, and resided here all of that time.

Question. What was the style of the firm with which he was connected at San Francisco from 13th of August, 1853, to 14th of November, 1856?

Answer. Cross & Co.

Question. Had you no interest, contingent or other, in said house from the 13th of August, 1853, to 30th of June, 1856, when you say you became a partner?

Answer. The only interest I had was a monthly salary, which did not depend upon the business.

Question. From the 30th of June, 1856, to 14th November, 1856,



have you been interested in the business of Cross & Co., their losses and gains, as well from storage as from other sources?

Answer. No, sir.

Question. In what manner, then, have you been interested in their business, and in losses and gains of said firm, during said last mentioned period?

Answer. When Mr. Cross left he made me a partner, with a monthly salary, until he consulted with his partner in Valparaiso about the division of the per centage of the business, and although I remained a partner I was on a salary till 31st of December, 1856?

Question. Please state, then, in what manner you were a partner from June 30, 1856, to November 14 in the same year.

Answer. I was a nominal partner with power to sign "Cross & Co."

Question. Did your compensation depend upon their business during that period?

Answer. No, sir.

Question. Who composed the firm of Cross & Co., of San Francisco, on the 13th of August, 1853, to the 14th of November, 1856?

Answer. Alexander Cross, of San Francisco, and David Thomas, of Valparaiso, from that date to June 30, 1856. After that it was the same, (Alexander Cross and David Thompson,) together with John Wedderspoon and Joseph Clark, both of San Francisco. Mr. Wedderspoon and myself were on a monthly salary from July 1, 1856, to December 31, 1856.

Question. Did Cross & Co. occupy the warehouse in question from the 1st of September, 1854, to the 14th of November, 1856, except the portion which they rented to Southgate & Co.?

Answer. They occupied it for taking in storage.

Question. Did they collect the rents from Alvarez and Southgate & Co.?

Answer. They did, sir.

Question. Did they rent the whole warehouse, as you have mentioned, from the 1st of September, 1853, to 1st of September, 1854, to Alvarez, and the ground floor to Southgate & Co., from the 10th of August, 1855, to the 14th of November, 1856.

Answer. Mr. Cross rented it. Whether he was acting for himself or for Cross & Co. I don't know.

Question. Was the rent obtained from Alvarez the highest rent that could have been obtained for said warehouse during the year that he occupied it?

Answer. Yes, sir.

Question. Could it have been rented to him the year following?

Answer. It was offered to him for five hundred dollars a month the next year, and he refused.

Question. Did he make an offer for it?

Answer. Not to my knowledge.

Question. Did any one else, to your knowledge, offer to rent it during said second or any subsequent year, down to November 14, 1856?

Answer. No, sir.

Question. Were there not more goods stored in either of the other

warehouses owned by Cross from September 1, 1854, to August 14, 1856, than in the warehouse in question?

Answer. There might have been more in the warehouse rented by Samuel Price & Co., but in the other there was no more, to my knowledge.

Question. Could no goods be obtained on storage from August 13, 1853, to the 1st of September of the same year?

Answer. We had it advertised for rent. We took no storage during that time until we saw whether we could rent it for a reasonable time.

Question. Was there any relationship, personal or in business, between Francisco Salvador Alvarez and Alexander Cross or his Valparaiso partner, during the time he rented said warehouse, except said renting?

Answer. Not to my knowledge.

Question. Was there not, from the 1st of September, 1854, to the 10th of August, 1855, and even to the 14th of November, 1856, large quantities of goods arriving in San Francisco which were stored, and could not said warehouse have been kept filled, or nearly so, by the use of reasonable exertions for that purpose?

Answer. Goods were arriving here, but the store could not have been kept filled.

Question. Has the warehouse in question been kept in good order for the storage of goods during the whole of said period, that is, from the 13th of August, 1853, to the 14th of November, 1856?

Answer. Yes, sir.

Question. Has not the roof been leaky?

Answer. No, sir.

Question. Was it not in other respects out of repair and not in a condition to preserve goods stored without damage?

Answer. No, sir.

Question. Were either of the other buildings owned by Cross rented to any one prior to the 14th of November, 1856, except the renting which you have mentioned to Price & Co.?

Answer. The only renting of these buildings was to Price & Co., as I have before stated.

Question. Was there any business or other connexion between Price & Co. and Cross or Cross & Co. except said renting?

Answer. We have bought goods from him and he bought goods of us, but there was no connexion other than might have been between two other commission merchants.

Question. You say Southgate & Co. occupied a portion of the ground floor at one hundred dollars a month; who occupied the balance of said floor, for what purpose, and at what rent?

Answer. Cross & Co., for storage.

Question. Did you often, during the absence of Lund, deliver goods and take receipts for them?

Answer. I could not answer how many times.

Question. When you did so, did you make the proper entries of such delivery in the storage book kept by him?

Answer. I made the proper entries in the delivery book, got the

drayman to sign it. I never wrote in the storage books except this one delivery book.

Question. Did the price of storing goods in San Francisco during the period from August 13, 1853, to November 14, 1856, generally among storekeepers, vary in the manner you have stated, that is, from fifty cents to one dollar per month, according to the quantity stored?

Answer. I did not state that.

Question. Well, then, state what you did state?

Answer. I stated, from the 1st of September, 1854, to the 14th of November, 1856, it varied in that way.

Question. Was that variation customary in San Francisco?

Answer. Yes, sir; in free stores, not in bonded stores.

The counsel for the United States having closed, the counsel for claimant again took the witness.

Question. In one of your answers to the cross-examination you state that Cross & Co. occupied the building in question for taking in storage; do you mean by the word "occupy" the same as the word "use?"

The counsel for the United States objects to the question as leading.

Answer. I answered that they occupied or used the building only for storage. They never had their offices in it, nor slept in it, or used it for any other purpose.

Question. In one of your answers to the cross-examination you state that there might have been more goods in the warehouse leased to Samuel Price & Co. than there was in this one; do you mean goods on storage with Cross & Co., or goods on storage with Samuel Price & Co.?

Answer. The goods were on storage with Samuel Price & Co., and Cross & Co. had no interest in the goods or storage.

NOTE.—The counsel for claimant here shows the witness the advertisement marked A, annexed to the deposition of R. Cutler Moore, and asks:

Question. What building that advertisement refers to?

Answer. It refers to the building that I have been testifying about, and known as the first United States bonded warehouse. It refers to the building in question and nothing else.

Question. Were either of the other buildings of which you have spoken ever occupied as the United States bonded store?

Answer. Yes, sir; but not during that period; that is, not anterior to that advertisement.

Question. Do you know anything else relative to the claim in question?

Answer. No, sir.

JOS. CLARK.

STATE OF CALIFORNIA, }  
City and County of San Francisco, } ss.

On this 17th day of July, A. D., 1857, personally came Joseph Clark, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the

questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Joseph Clark, taken at the request of counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Alexander Cross. The parties appeared by consent of counsel and did not object.

TULLY R. WISE,  
*Commissioner*

Fees of witness .....	\$1 50
Commissioner's fees .....	15 00
	<hr/>
	16 50
	<hr/> <hr/>

STATE OF CALIFORNIA, }  
*City and County of San Francisco,* } ss.

On this 16th day of July, A. D. 1857, personally came before me R Cutler Moore, the witness within named, who, having been first sworn according to law to tell the truth, the whole truth, and nothing but the truth relative to the claim of Alexander Cross against the United States, does upon his oath testify that his name is R. Cutler Moore; that he is a printer; that he is thirty-nine years of age; that he has resided in this city for the past year; that he has no interest, either direct or indirect, in the claim in question, and that he is not related to the claimant in any degree whatever.

Question. What has been your occupation since August 18, 1853?

Answer. I have been engaged in the office of the Alta California newspaper as printer and a portion of the time as publisher.

Question. Look at that advertisement, Mr. Moore, and state when it first appeared in the Alta California newspaper, and how many times it was published in said paper.

Answer. It first appeared on August 18, 1853, and was published for fifteen days consecutively, Sundays as well as other days.

(The said advertisement is hereto annexed, marked A.)

Question. State what was the standing of the Alta California newspaper in this State and city with regard to circulation at that time.

Answer. It was one of the leading papers at that time. I cannot state what its circulation was at that time.

The counsel for the United States declines to ask any questions.

Question. Do you know any other matter relative to the claim in question?

Answer. I do not.

R. C. MOORE.

STATE OF CALIFORNIA,  
City and County of San Francisco, } ss.

On this 16th day of July, 1857, personally came R. Cutler Moore, the witness above named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth relative to the claim of Alexander Cross against the United States, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of R. Cutler Moore taken at the request of counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Alexander Cross.

The adverse party attended by consent, and did not object.

TULLY R. WISE,  
Commissioner.

Fees of witness.....	\$ 1 50
Commissioner's fees.....	15 00
	<hr/>
	\$16 50
	<hr/> <hr/>

A.

FOR LEASE OR RENT—That superior four story building on Battery street, hitherto occupied as the first U. S. bonded store.

This is one of the strongest and most costly edifices in the city, with clear floors 100 by 25 feet, newly painted inside, and most suitable for warehouses, counting rooms, printing offices, or any commercial purpose. Its situation is in the centre of business—it is convenient of access from Sansome street by a private alley, and is most secure against fire risks. There is a private side walk on Battery street of about five feet.

Storage in large parcels taken on moderate terms.

Apply to

au 18-15

CROSS & CO.

STATE OF CALIFORNIA,  
City and County of San Francisco, } ss.

On this 20th day of July, A. D. 1857, personally came Daniel Gibb, the witness within named, and having been first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does upon his oath say, that his name is Daniel Gibb; that he is a merchant; that he is between thirty and thirty-one years of age; that he has resided in San Francisco during the past year; that he has no interest, either direct or indirect, in the claim in question; that he is not related to the claimant in any degree whatever.

Question. Mr. Gibb, are you acquainted with the rates of storage in San Francisco from the 1st of September, 1854, to the 14th of November, 1856; and if you are, what were those rates?

Answer. Is it in free or bonded warehouses? (NOTE.—The counsel for the claimant says, in both, state separately the rates in both. The witness continues.) In free warehouses the current rate has been fifty cents a ton, with occasionally twenty-five cents or fifty cents additional for the first month; in bonded warehouses the current rate has been from one dollar to one dollar and a quarter per ton per month.

Question. Is there any difference, Mr. Gibb, in free warehouses where advances are made upon goods and when advances are not made upon goods?

Answer. A very material difference.

Question. Will you explain what that difference is?

Answer. It is comparatively a matter of extreme difficulty to procure storage without making advances upon goods, or agreeing to do so if required.

Question. Have you stored goods here or received goods on storage; and if so, since when?

Answer. I have been doing both since 1849.

Question. Mr. Gibb, are you the same Daniel Gibb who is at present President of the Chamber of Commerce of San Francisco?

Answer. Yes.

Question. Can you state what has been the expense per ton of receiving and delivering goods on storage between September 1st, 1854, and November 14, 1856?

Answer. Yes; it has been on the average not less than sixty cents per ton in two story buildings of ordinary construction, with ordinary facilities for taking in goods.

Question. Do you know Cross's warehouse on the west side of Battery street, between Jackson and Pacific?

Answer. I do.

Question. What would be the expense during the period last mentioned of receiving and discharging goods per ton in the most northerly of the three warehouses belonging to Cross, last mentioned?

Answer. Being a lofty building, the average expense, in my opinion, would be not less than sixty-five cents per ton.

The counsel for claimant here closed, and the counsel for the United States took the witness.

Question. How long have you resided in San Francisco?

Answer. With the exception of two visits to Europe, occupying together sixteen or seventeen months, over eight years.

Question. Has Mr. Joseph Clark, the witness who previously gave his testimony in this cause, conversed with you in regard to the testimony which was desired from you, or in regard to the facts about which you have just testified?

Answer. Very little. He asked me whether I knew the current rates of storage during the time I had been here, and whether I would be willing to testify to my knowledge of the facts in a case in which Mr. Cross is interested. I told him that the nature of my business



made me perfectly conversant with the facts, and that if he would not take up too much of my time I had no objection to testifying.

Question. Did the conversation which you have just related take place before to-day?

Answer. Yes; some days ago he made that request of me.

Question. Were the rates of storage and the cost of receiving and delivering goods mentioned by him or you at that interview?

Answer. Yes; it was on these points that he told me that my evidence would be required.

Question. Has he not conversed with you on the subject of your examination, and in regard to the testimony given by the previous witness, Falkner, in this room, whilst we were examining the said witness, Falkner?

Answer. No; not beyond some passing remarks which I made to him with regard to one or two points of Mr. Falkner's testimony, or rather the questions put to Mr. Falkner on the cross-examinations.

Question. Did you store goods or receive goods on storage in San Francisco, during the year 1854?

Answer. Yes; both.

Question. In free or bonded warehouses?

Answer. I received goods in free warehouses, and stored goods in both bonded and free warehouses.

Question. Were not goods during that year, and have they not since, prior to November 14th, 1856, been stored in San Francisco in free warehouses at as high rates as one dollar per ton?

Answer. Not generally; in exceptional cases, they may have been for small lots of goods, or where money lenders advanced on the goods and made their own terms as to storage.

Question. Is not the warehouse in question a desirable one in point of location, and one likely to be easily rented and generally kept filled?

The counsel for claimant objects to the question, because it was not the subject matter of the direct examination.

Answer. It is moderately well situated; there are many warehouses better located, and others of course worse; ever since the building mania of 1853, which prevailed in San Francisco, it has been a matter of great difficulty to rent warehouses or to keep them full of storage. The storage business has been chiefly conducted by parties who made it their business to advance money on goods in addition to storing them.

Question. Are you acquainted with the claimant?

Answer. I am.

Question. Intimately; and with his business?

Answer. I am personally acquainted with him, but cannot say that I am intimately acquainted with any man's business except my own; I may further say that, we are rivals in trade, and not likely to be confidential with each other.

Question. Were you acquainted with him before he or you came to San Francisco to reside?

Answer. I knew him slightly in Valparaiso; he was then the head of a house and I was a clerk in another house.

Question. Are you a countryman of his ?

Answer. By birth, I believe ; he is a British subject and I am now a citizen of the United States.

Question. Of what country are you a native ?

Answer. I am a native of Scotland.

Question. Of what country is he a native ?

Answer. I believe he is a Scotchman, also.

Question. Did Messrs. Cross & Co. make advances on goods received on storage in their warehouse in the years 1854, 1855 and 1856, in San Francisco ?

NOTE.—The counsel for claimant objects to the question, as irrelevant.

Answer. I do not know.

Question. Did you make advances on goods stored with you during those years ?

Answer. Some times when I had money to lend.

Question. Did you receive goods on storage during either of those years when you did not make advances ?

Answer. Very seldom, such not being my general business.

Question. What was your general business ?

Answer. Importer and commission merchant, trading with most parts of the civilized globe ; also, ship owner, money lender, real estate owner.

The counsel for the United States here closed, and counsel for claimant takes the witness.

Question. There is an apparent ambiguity, Mr. Gibb, between your cross-examination and your direct-examination, where you say in the latter that taking goods on storage is not your general business, will you state more fully this ambiguity, and state whether you have done much in storing goods and taking goods on storage, between the period of 1st September, 1854, and 14th November, 1856 ?

Answer. During that whole period I have been constantly receiving large quantities of goods on consignment from foreign countries, and from eastern domestic ports, as well also on account of my firm of Daniel Gibb & Co., these goods including many entire cargoes of coffee, rice, sugar, and other merchandise ; such goods I have frequently sold on arrival, stipulating with the purchasers to store them for their account, and charging them storage therefor ; I have also stored large quantities of flour from a mill which I owned in Stockton, and on which flour I advanced money to the tenants from the mill, and also, sometimes received flour from them without advances. It has also been the custom in my business to sell large invoices of goods at wholesale, on which I received storage from the purchasers, so that although my business was not generally speaking that of a store keeper, yet in various ways I have done a large amount of storage business.

Question. Do you know any other matter relative to the claim in question ; if you do state it ?

Answer. Nothing else.

DANIEL GIBB.

STATE OF CALIFORNIA,  
*City and County of San Francisco,* } ss.

On this twentieth day of July, A. D. 1857, personally came Daniel Gibb, the witness within named, who having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Daniel Gibb, taken at the request of counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Alexander Cross. The parties appeared by counsel; and Mr. Emmett acted as counsel for claimant and Mr. Townsend as counsel for the United States.

TULLY R. WISE,  
*Commissioner.*

Fees of witness.....	\$1 50
Travel.....	—
Attendance.....	—
Commissioner's fees.....	15 00
	<hr/>
	16 50
	<hr/>

The fees charged here are more than the law of Congress allows.

STATE OF CALIFORNIA,  
*City and County of San Francisco,* } ss.

On this twentieth day of July, A. D. 1857, personally came Evelyn R. Falkner, who having been first sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does upon his oath say that his name is Evelyn R. Falkner; that he is a merchant and insurance agent; that he is forty-three years of age; that he has resided in the city of San Francisco since 1848; that he has no interest, either direct or indirect, in this claim; that he is not related to the claimant in any degree whatever.

Question. Are you acquainted with Cross' warehouses on Battery street?

Answer. Yes.

Question. Are you informed on the value of property and the rents of property in the city of San Francisco in the year 1850?

Answer. Yes sir.

Question. Have you been in the warehouse farthest north, where Southgate & Co. are?

Answer. Yes, sir.

Question. What was a fair rent for that entire building in the year 1850?

The counsel for the United States objects to the question on the ground of irrelevancy. The counsel for the claimant withdraws the question.

Question. Mr. Falkner, are you acquainted with the rates of storage in the city of San Francisco from September 1, 1854, to November 14, 1856? and if so, state what were the current rates.

Answer. Yes, sir; I am acquainted with them. Seventy-five cents per ton per month would be an average. Goods may have been taken as low as fifty cents per ton per month; but then some were as high as one dollar.

Question. Can you state, sir, during the same period, what would be the expense of receiving and delivering goods on storage in the building in question?

Answer. Yes, sir; not less than sixty-two and a half cents a ton certainly, and more like seventy-five.

The counsel for claimant here closed and the counsel for the United States took the witness.

Question. Are you, or have you been since you have resided in San Francisco, the owner of any warehouse or warehouses or engaged in the storage of goods for hire?

Answer. I have been the owner of one and a half warehouses; one stood entirely in my name and I had a half interest in another; that was in the years 1853 to 1856. The half interest was from the year 1853 to 1856, and the whole warehouse was from 1855 to 1856. These buildings were leased to other parties who received goods on storage; we did not take goods ourselves in these buildings, I mean my firm, but we frequently sent goods there ourselves on storage. I, or we the firm of Falkner, Bell & Co., have been receiving goods on storage in the store occupied by us in California street since February, 1855, I think it was.

Question. Was there any difference in the prices of storage in the years 1853, 1854, 1855, and 1856, in San Francisco?

Answer. There may have been a very slight difference of a few cents a ton.

Question. Was the difference slight, if any?

Answer. Yes, sir.

Question. Was there any difference or any perceptible difference in the rent of warehouses used for storage, in San Francisco, in the same years 1853, 1854, 1855, and 1856?

Answer. Yes, a slight decline from year to year.

Question. Was that decline but very slight?

NOTE.—The counsel for claimant objects to the question as matter that did not form the subject of the direct examination.

Answer. The decline would be proportionate to the size of the building. I know that in our case we got a deduction of five and twenty dollars per month from the rent of 1855.

Question. Were goods stored as high as the rates mentioned in the direct examination during the year 1856, mentioned by you?

Answer. Yes, sir.

Question. Were many goods stored as high as a dollar per ton per month?

Answer. Yes, sir ; and even to the present day in some instances we store at that rate.

Question. Have you had your warehouse or warehouses generally filled with goods during the years, 1853, 1854, 1855, and 1856?

NOTE.—The counsel for claimant objects to the question because it was not the subject matter of the direct examination.

Answer. Yes, sir.

Question. Did you have any difficulty in keeping your warehouses filled at the rates you have mentioned during those years?

NOTE.—The counsel for claimant makes the same objection to the question as to the last.

Answer. Yes, occasionally we had.

Question. Is the warehouse in question as well or better located than yours for obtaining storage?

NOTE.—The counsel for claimant urges the same objection as to the last question.

Answer. Yes, sir, better.

Question. Have not the prices of labor and consequently of receiving and delivering goods diminished or decreased since 1854?

Answer. Very little.

Question. Has there been any difficulty in San Francisco in leasing a warehouse as eligibly situated as the one in question since the first of September, 1854, to the 14th of November, 1856?

NOTE.—The counsel for claimant objects to the question because it was not the subject of the direct examination.

Answer. I should think not much.

Question. Has there been any difficulty during the same period in keeping a warehouse as eligibly situated as that filled with goods on storage?

NOTE.—Counsel for claimant urges the same objection as to the last question.

Answer. Yes, occasionally.

Question. Has there been generally?

NOTE.—The counsel for claimant urges same objection as to last question.

Answer. No, not generally.

Question. Is not the warehouse in question one of the most eligibly situated in the city for obtaining a tenant, or for obtaining goods on storage?

NOTE.—The counsel for claimant objects to the question ; first, because it was not the subject of the direct examination, and second, because it is leading.

Answer. Not the most, I should say ; not one of the most.

Question. What, according to the current rates of rents of warehouses in San Francisco, would the ground floor of the warehouse in question have brought from the 1st of September, 1854, to the 14th of November, 1856?

NOTE.—The counsel for claimant objects to the question, because it was not the subject-matter of the direct examination.

Answer. About two hundred and fifty dollars per month.

The counsel for the United States here closed, and the counsel for claimant again took the witness.

Question. Mr. Falkner, to obtain storage from the 1st of September, 1854, to the present time, has it not been necessary for the persons taking goods on storage to make advances upon the goods?

NOTE.—The counsel for the United States objects to the question so far as it relates to the period of time, from the 14th of November, 1856, to the present day, as irrelevant.

Answer. Very frequently; it greatly facilitated filling the store.

Question. You testified, Mr. Falkner, that you had your warehouses generally filled with goods during the years 1853, 1854, 1855, and 1856. Did you make advances on those goods?

Answer. That is our principal business, advancing on goods.

Question. During that period, sir, was a warehouse of the size of the one in question likely to be filled with goods on storage if the proprietor did not make advances upon the goods stored?

Answer. It was always a great objection to storing goods unless the parties knew they could obtain advances. People requiring advances always prefer a storehouse where they can get it, to one where they cannot get advances.

The counsel for claimant having finished, the counsel for the United States again takes the witness.

Question. Were there not great quantities of goods arriving in San Francisco in the years 1853, 1854, and later, so that storage was during these years plenty.

NOTE.—The counsel for claimant objects to the question, because it was not the subject matter of the direct examination.

Answer. I really can't tax my memory, sir, for so long a period.

Question. Do you know anything else relative to the claim in question, if you do state it?

Answer. No, sir.

E. R. FALKNER.

STATE OF CALIFORNIA, }  
City and County of San Francisco, } ss.

On this 20th day of July, A. D. 1857, personally came E. R. Falkner, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the same in the presence of the commissioner. The deposition of E. R. Falkner, taken at the request of the counsel for claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of Alexander Cross. The parties attended by consent. Mr. Emmet appeared as counsel for claimant, and Mr. Townsend as counsel for the United States.

TULLY R. WISE,  
Commissioner.



Fees of witness.....	\$1 50
Travel .....	
Attendance.....	
Commissioner's fees.....	15 00
Total.....	<u>16 50</u>

STATE OF CALIFORNIA, }  
*City and County of San Francisco,* } ss.

On this 29th day of December, A. D. 1857, personally came before me John H. Wise, who having been first sworn according to law to tell the truth, the whole truth, and nothing but the truth, relative to the claim of Alexander Cross against the United States, does upon his oath depose and say that his name is John H. Wise; that he is deputy collector of the port of San Francisco; that he is twenty-eight years of age; that he has resided in San Francisco during the past year; that he has no interest, either direct or indirect, in the claim of Alexander Cross against the United States; that he is not related to the claimant in any degree whatever.

Question. What is your present occupation?

Answer. I am at present deputy collector of the port of San Francisco,

Question. Have you recently examined the files or papers in the custom-house of the port of San Francisco? or state about when?

Answer. I have examined all the files of papers in the collector's room, and those files of papers comprise all the correspondence with the Treasury Department, at Washington.

Question. Do they comprise all the official correspondence between the collector and other parties?

NOTE.—The counsel for the United States objects to the question as leading.

Answer. They do not comprise all; they do not comprise auditor's accounts, which are filed in the auditor's office, and certain other accounts.

Question. With what object did you make that search?

Answer. With regard to a protest of Cross & Co., when notified by Major Hammond, then collector, that his warehouse was discontinued as a bonded warehouse by order of the Secretary of the Treasury.

Question. Look at the paper now shown you, and marked exhibit A, and state if it was the original of which the paper shown you is a press copy, which you were directed to search for, and which you did search for?

NOTE.—Counsel for United States objects to the question as leading.

Answer. I was directed to search for the original of which this purports to be a press copy; this is the paper which was shown me at the time; I mean exhibit A.

Question. Did you find such original?

Answer. No, I did not.

Question. Were the files of which you have spoken the proper place to find a letter of that character?

Answer. Yes.

Question. Did you find any letter from Alexander Cross to Richard P. Hammond, collector, among those files?

Answer. I don't recollect now, but I am positive there was nothing bearing upon the subject of this protest from Cross.

Question. By whose direction did you make that search?

Answer. By the direction of the present collector, Colonel Washington.

Question. Can you state whether there are any papers or letters missing from those files which, to your knowledge, should be amongst them?

Answer. The letters from the Secretary, as for instance, are numbered, and, in examining the files, I find several numbers are missing, and it is the same with regard to the other correspondence; but it is not in my own knowledge whether those letters ever came to this place or not.

The counsel for claimant here closed, and counsel for the United States took the witness.

Question. How do you know that the files in the collector's room comprise all the correspondence with the Treasury Department, and that there may not be other files of correspondence with said department elsewhere?

Answer. In examining the files I find the greater part of the correspondence with the department from the time of the first collector down to the present time, and, upon inquiry, I find that none of the other officers in the custom-house have any in their possession.

Question. Do you know that none of the other officers in the custom-house have any of them in their possession otherwise than from the information of such officers?

Answer. No, I do not; but if they have them in their possession, they must have taken them from the vaults in the absence of those who belong to the collector's room.

Question. Why do you arrive at this conclusion?

Answer. Because all the letters come to the collector first, and he knows the correspondence with the department.

Question. Does he never, on any occasion, allow letters to be taken from his room?

Answer. I do not know what the practice has been with former collectors, but the present collector allows it, but a memorandum is kept of it.

Question. How many letters did you find missing from the files in the collector's room, and in what year?

Answer. That I took no account of; but there is none missing from the time since Washington came into office.

Question. Can you not state about the number missing?

Answer. No; I have no conception, as I never examined the records with regard to that.

Question. How long have you been in the collector's office at San Francisco?

Answer. Three or four months; I don't recollect the exact time.

Question. Were you ever employed in a custom-house previous to your employment here at San Francisco?

Answer. No; I never was employed in any other custom-house than this.

Question. Who has charge of the papers in the collection room?

Answer. I have charge of them.

Question. Is there correspondence with the Treasury Department on file, in the auditor's office in the custom-house at San Francisco, relating to accounts or other matters?

Answer. There is no correspondence with the Treasury Department that I know of; those letters ought to be on file in the collector's room.

Question. When did you make the search of which you have spoken?

Answer. About ten days since.

Question. How long were you engaged in making such search; and did you look carefully through all the files of correspondence in the collector's office?

Answer. I do not know the time, but I examined every file and every paper, and it is certainly not in that office. I found letters from Major Hammond, before and after the date of exhibit A, and Mr. Cross's letter ought to have been in one of two packages, if it had been in the collector's room, as Major Hammond's letters referred to Mr. Cross' warehouse.

Question. Do you know any thing else relative to the claim in question; if you do, state it?

Answer. I know nothing in regard to the claim, except that I found in examining the press letter book, kept by Major Hammond, a letter addressed to the Secretary of the Treasury, James Guthrie, in which letter the collector refers to the protest of Mr. Cross, and I gave a copy of it to Mr. Clark for Mr. Cross. The letter is certified to by the collector as being a true copy.

JOHN H. WISE.

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STATE OF CALIFORNIA,

*City and County of San Francisco, ss.*

On this 29th day of December, A. D., 1857, personally came John H. Wise, the witness within named, and after having been first sworn to tell the truth, the whole truth and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness who then subscribed the deposition in the presence of the commissioner. The deposition of John H. Wise taken at the request of Mr. Emmet, counsel for claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Alexander Cross. J. B. Townsend

attended as counsel for the United States, by consent, and did not object.

TULLY R. WISE, *Commissioner*.

SAN FRANCISCO, *August 13, 1853.*

SIR: I have to acknowledge the receipt of a letter from you under date August 4th, apprising me that in obedience to instructions from the Secretary of the Treasury you will on the 13th instant give up the possession of my warehouse, on Battery street, and not pay any rent for it after that date.

I do not recognise a right in the Secretary of the Treasury to rescind my contract with the government in reference to said warehouse, and I shall therefore claim payment of rent pursuant to said contract until the expiration of the term for which the building was leased.

Respectfully your obedient servant,

ALEXANDER CROSS.

RICHARD J. HAMMOND, Esq.,  
*Collector of Customs.*

STATE OF CALIFORNIA,

*City and County of San Francisco, ss.*

I, Tully R. Wise, a commissioner appointed by the Court of Claims to take testimony to be used before said Court, do hereby certify, that the depositions of Joseph Clark, Richard P. Hammond, and John H. Wise were taken before me to be used in the claim of Alexander Cross against the United States; that all the witnesses referred to exhibit A, annexed to the deposition of John H. Wise. That this is the identical paper referred to by all of said witnesses, and that I have put my name to it as did all the witnesses, viz: Richard P. Hammond, Joseph Clark, and John H. Wise.

TULLY R. WISE, *Commissioner*.

Commissioner's fees, \$8.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT, *June 2, 1857.*

Pursuance to the act of Congress of 22d February. 1894 I hereby certify that the annexed are true copies of the originals on file in this department.

In witness whereof, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed, on the day and  
[L. S.] year first above written.

HOWELL COBB,  
*Secretary of the Treasury.*

## OATH OF OFFICE.

I, Thomas Butler King, having been appointed to the office of collector of the customs for the district of San Francisco, in the State of California, do solemnly, sincerely, and truly swear that I will diligently and faithfully execute the duties of the said office of collector, and will use the best of my endeavors to prevent and detect frauds, in relation to the duties imposed by the laws of the United States. I further swear that I will support the Constitution of the United States.

T. BUTLER KING, *Collector.*

Sworn to and subscribed this 31st day of October, 1850, before me.  
Witness my hand and seal.

SAM. R. BETTS, [L. s.]  
*U. S. Judge, Southern District of New York.*

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TREASURY DEPARTMENT,  
*Comptroller's Office, November 1, 1850.*

SIR: Your official bond having been received and approved, your commission as collector is herewith transmitted. Inasmuch as there is a question about the legality of your oath of office endorsed thereon, taken before the judge of the district court for the southern district of New York, you are required, before entering upon the duties of your office, to take another oath of office within the collection district, before some judge or magistrate authorized to administer oaths therein, and have the official character and signature of such officer duly certified by the clerk of a court of record of the proper county, under his seal of office, in accordance with the form of oath and certificate and the instructions at the bottom of the blank bond herein enclosed; and you will please to transmit the same, so certified, forthwith to this office; and on so doing, James Collier, esq., your predecessor in office, will deliver to you, on application, all the public money and other public property, books, papers, &c., as well as instructions relative to the duties of the office, with which he has been furnished by this department; for all of which you will give him duplicate receipts, specifying every article.

Very respectfully, your obedient servant,

E. C. SEAMAN,  
*Acting Comptroller.*

T. BUTLER KING, Esq., *New York.*

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UNITED STATES OF AMERICA,  
*State of California, District of San Francisco.*

I, Thomas Butler King, having been appointed collector of the customs for said district, solemnly, sincerely, and truly swear, that I will diligently and faithfully execute the duties of said office of collector, and use the best of my endeavors to prevent and detect frauds in re-

lation to the duties imposed by the laws of the United States, I further swear that I will support the constitution of the United States.

T. BUTLER KING.

Sworn to and subscribed before me, this eighth day of January, in the year one thousand eight hundred and fifty-one.

LEVI PENSONS,

*Judge of the 4th district court.*

TREASURY DEPARTMENT,

*Office of Commissioner of Customs, June 2, 1857.*

I hereby certify that the annexed papers are true copies of the originals on file in this office, to wit: Oath of T. Butler King, collector of customs for the district of San Francisco, in the State of California, dated the 31st October, 1850; letter of E. C. Seaman, acting Comptroller, dated the 1st November, 1850, addressed to T. Butler King, at New York, and oath of T. Butler King, dated the 8th January, 1851.

H. J. ANDERSON, *Commissioner of Customs.*

The SECRETARY OF THE TREASURY.

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT,

*June 2, 1857.*

Pursuant to the act of Congress of February 22, 1849, I hereby certify that the annexed is a true copy of a letter from the Secretary of the Treasury to the collector of the customs at San Francisco, California, dated April 12, 1853; from the records of this department.

In witness whereof, I have hereunto set my hand, and caused the [L. S.] seal of the Treasury Department to be affixed on the day and year first above written.

HOWELL COBB,

*Secretary of the Treasury.*

TREASURY DEPARTMENT, *April 12, 1853.*

SIR: The leases and contracts for five warehouses at San Francisco, California, coming before me for consideration and directions to the collector, I have carefully read and considered the 21st section of the act of the 2d March, 1799, and find it invests the several officers of the customs with the powers enumerated, and, amongst others, declares "they shall, with the approbation of the principal officer of the Treasury Department, provide, at the public expense, storehouses for the safe-keeping of goods, and such scales, weights and measures as may be necessary."

The act of April 20, 1818, declares that "wines and distilled spirits shall be deposited in such public and other warehouses, at the expense and risk of the importer, as shall be agreed upon between the surveyor and inspector."

The act of the 3d March, 1841, provides that all stores thereafter rented by the collector, naval officer, or surveyor, shall be on public



account, and paid for by the collector as such, and be appropriated *exclusively* to the use of receiving foreign merchandise, subject, as to rates of storage, to regulations by the Secretary of the Treasury.

The warehousing act of the 6th August, 1846, making all duties payable in cash on importation, except when the importer should warehouse them, in which case they are to be deposited in the public stores, or other stores, as agreed upon between the collector and importer.

By the 5th section of that act, authority is given to the Secretary of the Treasury to make such rules and regulations, not inconsistent with law, as shall be necessary to give full effect to the provisions of the act and have a just accountability.

By virtue of this authority, R. J. Walker, Secretary of the Treasury, on February 17, 1849, issued a circular in *lieu* of all former circulars upon the subject of warehousing goods, in which directions are given for all the proceedings necessary to place goods in warehouses, for the selection of warehouses, and provides that all the selections should be subject to the approval of the Secretary of the Treasury.

The foregoing are all the laws giving collectors authority to rent stores or warehouses and the rent and selections are required to be subject to the approval of the Secretary.

The authority is given to the collector and not to the Secretary. The collector is to rent and select, and the Secretary to approve. There is no authority given to the Secretary to rent, and no authority to the collector to approve.

The agreement of July 28, 1851, between Thomas Corwin, Secretary of the Treasury, and James Eldredge, for building and the rent of stores from the time they should be completed, at \$1,500 per month each, is made without authority of law, and is not binding on the United States, or this department, or the collector; and the same may be said of the agreement under date of the 24th February, 1853, between Theodore Adams and Thomas Corwin, for constructing a building for appraiser's store and office is for ten years at \$2,083 per month.

The agreement made on December 31, 1853, between Beverly C. Saunders, collector, and Geogan & Lent, for the rent of a building, at \$1,500 per month, for one year, from January 1, 1853, to continue from month to month until terminated by notice from either party, was approved by W. L. Hodge, Assistant Secretary of the Treasury, and is a lease warranted by law, and to which no just exception appears. It is in the power and will be the duty of the collector to terminate it when he deems the rent too high or the building no longer needed.

The agreement between Daniel Saffarans and James Collier, under date of the 28th of April, 1849, appears to have been made in Hamilton county, Ohio, for the building by Saffarans of a fire-proof building at San Francisco, on a site to be selected by said Collier, and the lease of it for fifteen years at a rent of \$ , which contract was approved by William M. Meredith, Secretary of the Treasury, on condition that the rate of rent to be paid for the building should be agreed upon by the collector and approved by the Secretary, and the rent stipulated for to depend upon, and to be paid out of

appropriations expressly made by Congress for the purpose, and from no other service, or according to existing laws at the time of payment.

The supplemental agreement to give effect to the proceeding under date of the 11th of November, 1850, between T. Butler King and Daniel Saffarans, recites the building was completed; that the collector and King had contracted to rent said warehouse for 15 years, at \$2,000 per month; that the contract was sent to Washington, and Thomas Corwin disapproved of the rent at \$2,000 per month. On the 11th of November, 1850, it appears the rent was fixed at \$1,800 per month, for ten years from taking possession, between the owners and T. Butler King.

T. Butler King was appointed collector on the 14th of October 1850, and the law requires he should, before entering on his duties, take the oath of office in his collection district. He was in Washington at the time of his appointment, and had not, on the 11th of November, 1850, given bond or taken the oath of office, and was consequently not collector. He was in the same condition when the supposed agreement for a rent of \$2,000 per month was made.

The law requires the sworn collector to make these contracts, and he must be sworn in the district; and he ought to see the houses he rents, and know the value of the rent from actual personal knowledge. He was not a collector when the rent was fixed at \$1,500 per month, and was not in the district, and had not the knowledge, and could not know the value of the property, or its adaptation to the public use. This pretended lease is not binding on the United States.

The agreement made on the 7th day of June, 1852, between Thomas Butler King, collector, and Palmer, Cook & Co., bankers, for leasing fire-proof buildings for custom-house and naval offices, at \$3,000 per month, to continue until the custom-house now in course of construction, should be finished, appears to have the approval of Thomas Corwin, Secretary, without date.

I have reliable information that the cost of this house to the lessors, including ground, did not exceed \$——, and that the rent is about three times as much as it is fairly worth, and the house not adapted to the business, and inconveniently situated for a custom-house. The presumption of fraud from these circumstances is so strong that I feel it my duty to require the collector, on reaching California, to investigate the facts in relation to this case, what was the value of the property at the date of the lease, and what would have been then a fair rent for the property; and whether the property is convenient and suitable for the business, and any other facts in any way impeaching the fairness of the lease, and report them to me, with the names of such witnesses as can be relied upon to establish them, and their written statements when practicable; and you are authorized to cancel this lease, if the lessors will do so.

The collector will abandon the premises mentioned in the agreement with James Eldredge, and also that with Palmer, Cook & Co., and that with Daniel Saffarans, and notify the lessors, respectively, that rent will no longer be paid for said buildings, and that said pretended leases are held void.

The collector will also notify Theodore Adams that the contract under date of the 24th of February, 1853, is deemed void, and not

binding on the United States, and that possession will not be taken of the premises, if built, and no rent will ever be paid for the same.

These notices will all be made in writing, and copies delivered by an officer, and returns made on the original of the fact of service, in duplicate, with the date, and one copy returned to this department and the other retained in your office.

The collector will rent, subject to the approval of the Secretary of the Treasury, all such convenient stores and warehouses as he shall find necessary for the collection of the customs at the port of San Francisco, and at such rent as shall be fair and reasonable; and in all such leases provision shall be made to terminate the same upon reasonable notice, not exceeding three or six months.

The charge of storage in the public warehouses and stores at the port of San Francisco should not exceed the usual and fair charges of storage in private stores and warehouses at that port, and the charges for lighterage and drayage should not exceed the actual charges of the persons performing the same; and lighterage and drayage shall be left open to free competition.

JAMES GUTHRIE, *Secretary of the Treasury.*

R. P. HAMMOND, Esq., *Collector of San Francisco.*

TREASURY DEPARTMENT, June 23, 1857.

In addition to the papers transmitted to your chief clerk on the 3d instant, under your order of the 21st ultimo, in the case of Alexander Cross *vs.* The United States, I herewith transmit the copy of a letter from Richard P. Hammond, collector, to the Secretary of the Treasury dated August 15, 1853, reporting that he had served notice upon Mr. Cross, the assignee of Saffarans. It being suggested that the counsel of Cross desire a copy of the reply of Cross to this notice, stated to bear date the 13th of August, 1853, I have to state that the collector does not mention having received any such reply, and this department is not in possession of any information in regard to it.

HOWELL COBB, *Secretary of Treasury.*

TO THE COURT OF CLAIMS.

No. 32 ]

CUSTOM HOUSE, SAN FRANCISCO,  
*Collector's office, August 15, 1853.*

SIR: I have the honor to inform you that I have in obedience to your instructions, dated April 12, 1853, abandoned the store leased from Daniel Saffarans, and transmit herewith a copy of the notice served upon Mr. Cross, the assignee of Saffarans. The bonded merchandise which was stored in that warehouse has been transferred to a store of brick, fireproof, which has been bonded by Messrs. Hall & Co., on the corner of Green and Battery streets. The unclaimed merchandise has been removed to Eldredge's stores corner of Union street. That which has been in store over nine months will be sold at auction on the 22d instant.

I have the honor to be, very respectfully, your obedient servant,

RICHARD P. HAMMOND, *Collector.*

HON. JAMES GUTHRIE, *Secretary of the Treasury, Washington, D. C.*

TREASURY DEPARTMENT,  
*April 18, 1856.*

GENTLEMEN: I have examined the statement you left of the claim of Alexander Cross, assignee of Saffaran, and the one you enclosed under date of the 11th instant, and mark they do not conform to each other, nor my understanding of the case. If the account of \$12,130 29 rent paid up to June 1, 1855 was correct, Mr. Cross could, at the utmost, claim the excess of rent over the sum received, and interest on the balance until paid. But that is not correct; because Mr. Cross, I understand, occupied part of the premises himself, and does not account for the use of the part occupied.

In relation to the estimate of what rent the property would yield from June 1, 1855, to the end of the time claimed, the estimate of \$300 per month as in the first statement, or \$200 as in the last, is far below the actual worth of the property. Rents in San Francisco have not been reduced more than one-third, according to the best evidence the department has received. If you take \$500 per month as the loss for the whole time claimed, it would not, with interest, reach the amount supposed in either statement, whilst the mode of making the interest account gives more than Mr. Cross could rightly claim.

If the contract of lease was binding on the government, 92 months is the most that could be demanded, less the fair use of their property, by Mr. Cross, since he went into the use of it, after it was given up by the government. The claim on this predication would be for 92 months \$46,000, with interest, which, for convenience, is cast up to the 13th instant, on the gales past due; making 32 months, and interest deducted from the gales to fall due; leaving, on the 13th inst., the sum of \$42,780.

I have had reference to the accounts of the Collector of San Francisco upon the subject of rents paid for warehouses, and storage received, and expenses incurred about the care of the warehouses and custody of the goods, and find the rent paid per annum, including the Saffaran warehouse, amounted to \$79,000; and the storage per annum received to \$33,570 04, and the expenses per annum to the sum of \$84,994 80, showing a clear loss to the government per annum of \$130,224 66. This was for the year 1851, and the figures were worse for the government in 1852 and 1853.

I make this statement in contradiction to the supposition that the first years of the lease was, or could have been a source of profit to the United States. In fact, the records show it was needless, if not worse, to have United States warehouses on the west coast.

After a full examination you will see that it would be impossible to accept your verbal proposition to pay Mr. Cross \$60,000, even if the contract to build and lease was not fraudulent.

I am, very respectfully,

JAMES GUTHRIE,  
*Secretary of the Treasury.*

Messrs. CHAUNCEY & ASPINWALL.

*Letter of McAllister to Guthrie, Secretary of the Treasury.*

SIR: In behalf of and as attorney of Alexander Cross, a merchant of San Francisco, I submit the following statement in relation to a contract made on the 11th of November, 1850, by T. Butler King, collector of the port of San Francisco, and one Daniel Saffarans, of Tennessee, for the lease of a building in San Francisco, to be used for custom-house purposes, which contract has been assigned to Mr. Cross, under the circumstances hereinafter detailed, with the assent of Mr. King, as collector, and which contract was repudiated by a general order issued from your department, setting aside all contracts made in San Francisco for the renting of buildings in that city to be used for custom-house purposes.

I entertain the hope that, when your attention is called to the particular contract under consideration, you will promptly repair the injustice which has been done, unintentionally, in this instance.

The facts are, that Mr. Cross, a citizen of Great Britain, who had mercantile transactions in San Francisco, was applied to in the city of London, in October, 1849, by George W. Saunders, esq., (recently consul at that place,) in behalf of Daniel Saffarans, of Tennessee. Mr. Saunders exhibited to Mr. Cross articles of agreement entered into between James Collier, collector of the port of San Francisco, and the said Saffarans, on the 28th day of April, 1849, and approved conditionally by Mr. Meredith, then Secretary of the Treasury of the United States, on the 8th of May, 1849, which contract provided for the construction, by said Saffarans, of a building in the city of San Francisco on or before the 1st of September, 1850, to be used for custom-house purposes. The object of Mr. Saunders, the agent of Mr. Saffarans, was to obtain from Mr. Cross the pecuniary means of carrying the said articles of agreement into effect. The result of the negotiation was, that Mr. Cross agreed to advance the capital and construct the required building, receiving for his compensation ten per cent on the amount invested. In pursuance of such agreement, Mr. Cross constructed the building at a cost in money of between ninety and one hundred thousand dollars. Subsequently Mr. Meredith, then Secretary of the Treasury, having disapproved of the amount of rent reserved by the article of agreement exhibited to Mr. Cross by Mr. Saunders, (two thousand dollars per month for a term of fifteen years,) a further and new agreement was made on the 11th of November, 1850, by T. Butler King, collector of the port of San Francisco, and the said Daniel Saffarans, which, referring to the old agreement of April 28, 1849, and to the fact of the disapproval, by Mr. Meredith, of the amount of rent reserved in it, admitting that a building "of the quality and dimensions stipulated in said contract had been erected," and stating that the government was in much need of said "iron building," stipulates to rent it for ten years from the day when the possession of it shall be given to the then collector at a monthly rent of \$1,500.

This last agreement was approved by the Hon. T. Corwin, Secretary of the Treasury, upon condition "that the collector, T. Butler King, esq., upon his arrival at San Francisco, shall first examine the



warehouse in question, and duly accept the same as being substantially of the character, description, and dimensions required by the stipulations contained in the former articles of agreement herein referred to."

Subsequently Mr. Cross, having expended some \$90,000 to \$100,000 in the construction of said building, and not having received a dollar, either as compensation or in payment of his actual advances, and Mr. Collector King refusing to pay rent, either to Cross or Saffarans, in consequence of their dispute, found his only resource was to look to the property and the contract of lease for reimbursement. With this view, he entered into a negotiation with Daniel Saffarans for the purchase of the same, and finally on the 10th of July, 1851, obtained for himself an assignment of the lease on paying the sum of \$21,000, thus making his outlay some \$121,000. In addition to this payment of \$21,000, Mr. Cross was constrained to execute and deliver his bond, conditioned that, in case the sum of \$50,000 were paid him in the month of July, 1856, he (said Cross) would reconvey to Saffarans the property and lease.

The acceptance of the building, as required by Mr. Secretary Corwin, was given in writing by Mr. Collector King, who, at same time, after the negotiation between Cross and Saffarans, as above, recognised the assignment from Saffarans to Cross in the following words: "I, as collector of the port of San Francisco, do hereby accept the iron warehouse erected by Alexander Cross upon a part of the water lot, No. 49, on Battery street, now in the occupancy of the United States government as a bonded warehouse, as the warehouse contracted to be built by David Saffarans, as provided in a contract, of which the within is a copy; and I do hereby officially recognise said Cross as landlord, it being understood that I am to incur no individual responsibility in the premises. This acceptance to date as if done January 14, 1851."

The foregoing statement establishes the attitude of Mr. Cross towards this contract, and proves him to be a *bona fide* assignee of this contract for valuable consideration, free from anything (if anything exist) to taint it in its inception.

The only fact which occurs to me as producing the order of cancellation of the lease in question, under which Mr. Hammond, collector of San Francisco, abandoned the premises in question on the 13th of August, 1853, is a communication from Mr. Frank Ward to the department, in which objection is made to the building rented from Mr. Saffarans on two grounds:

First. That it is constructed of iron, and, in the opinion of Mr. Ward, is as inflammable as if it were constructed of wood.

Second. Objection is made to its capacity for holding goods.

I respectfully submit that the examination of and acceptance by Mr. Collector King, in pursuance of the instructions of Mr. Secretary Corwin, is a full answer to the opinions of Mr. Ward. Behind these the department will not go, particularly when the interests of one standing in the attitude of Mr. Cross are to be sacrificed. But if you should not deem the official action of the collector in the premises conclusive, I call your attention to the letter of Messrs. Cross & Co., in reply to Mr. Ward's statement. I would state that Mr. Cross, the



writer, is a gentleman of the highest respectability, whose statements are entitled to implicit confidence. As an act of justice to Mr. Cross I add that I am myself thoroughly acquainted with the building in question, having examined it together with the one adjoining, similar in every respect to it at a time when I desired to purchase the latter. That examination, together with a knowledge of the fact that both buildings had withstood the destructive fire of May, 1851, in which some fifty or sixty brick buildings were destroyed in the vicinity conducted me to the conclusion that better constructed structures and less liable to fire did not exist in San Francisco. As to the confidence to be reposed in any of my own statements I beg leave to refer you to the members of the delegations in Congress from the States of Georgia and California. But if, sir, you desire other testimony, I refer you to the joint statement of John Parrot, esq., Messrs. Tallant & Wilde, and E. D. Keyes, and others. This statement covers the whole ground taken by Mr. Frank Ward. Mr. Parrot is a respectable citizen of San Francisco, and a few years ago was United States consul at Mazatlan. Mr. Wilde, of the firm of Tallant & Wilde, is a brother of the late Hon. Richard H. Wilde, for years a distinguished representative in Congress from Georgia, and E. D. Keyes is an officer in the army of the United States, inferior to none of his brother officers in all that distinguishes the gentleman and honest man. Messrs. Dewitt & Harrison, another signature, is that of a highly respectable American mercantile firm in San Francisco, and Mr. T. O. Larkin, is a gentleman who has acted for years as American consul at Monterey, before the conquest of California.

I herewith hand you copies of the lease, the approval of Mr. Secretary Meredith, the acceptance of Mr. Collector King, of the letter of Mr. Collector Hammond, of the letter of Cross & Co., and the statement of Captain Keyes, and others. I cannot doubt that on the perusal of these documents, and in view of the circumstances of this case you will cheerfully cause justice to be done to Mr. Cross, either by reinstating the contract of lease or compensating him by allowing him the difference between the contract price and the real value of the premises for the period during which the building was in the occupancy of the government. The basis of this calculation will be found in the statement of Messrs. Parrot and others.

Very respectfully, your obedient servant,

M. HALL McALLISTER.

Hon. JAMES GUTHRIE,

*Secretary of the Treasury United States, Washington, D. C.*

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UNITED STATES COURT OF CLAIMS.

ALEXANDER CROSS vs. THE UNITED STATES.

*Plaintiff's Brief.*

The plaintiff in this case submits the following brief of legal points and authorities, on which he relies to maintain his right of action:

1st. That the contract of the 11th of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States, with the approval thereof by the Secretary of the

Treasury, of the first part, and Daniel Saffarans of the other part, by which said Saffarans leased to the United States for custom-house purposes the warehouse named in the petition, was a valid contract mutually binding on the parties thereto.—(Vide printed petition, pages 1 and 3, exhibits Nos. 5, 6, and 7, pages 14, 15, and 16.)

2d. Where a contract is mutually binding, it can only be dissolved by the consent of both parties, and cannot be dissolved by one without the consent of the other.—(*Leigh vs. Patterson*, 8 Taunt., 540.)

Therefore the attempt of Richard P. Hammond, the collector of San Francisco, by his letter of the 4th of August, 1853, under the instructions of the Secretary, to abandon and repudiate the lease and stop the payment of rent, against the will and without the consent of the lessor, was an act done without warrant of law and void, and in no way impaired the rights of the lessor.—(Vide printed petition, page 4, and exhibits Nos. 13 and 14, page 19.)

3d. The letter of instructions of the Secretary of the Treasury, of the 12th of April, 1853, directing said Hammond to abandon said warehouse and stop the payment of rent, which assigns his reasons for so doing, abounds in errors both of law and fact.

It is erroneous in matter of *law*, in stating that the acts of Congress give to the collector, and not to the Secretary, authority to select and rent warehouses; that the Secretary approves; but, that there is no authority given to him to rent.

It is admitted that the law authorizes a collector of the customs, “with the approbation of the principal officer of the Treasury department,” to provide, at the public expense, storehouses for the safe keeping of goods; (vide 21st sec., of act of 2d March, 1779, vol. 1, Laws United States, 642;) but, it is also true, that the joint resolution of the 14th of February, 1850, (which the Secretary has wholly overlooked,) expressly authorizes the Secretary, in his discretion, to lease such warehouses “as may be necessary for the storage of unclaimed goods or goods which, for any other reason, are required by law to be stored by the government.”—(Vide, 9th vol. Laws United States, 560.)

On this head, it will be claimed by plaintiff, that taking all the laws on this subject together, it is plain, that if a warehouse be leased by a collector with the approbation of the Secretary, given either before or after the execution of the lease, or if it be leased directly by the Secretary or under his direction, the lease is in either case, and in either of these modes, valid and binding on both parties to it.

4th. Said letter of instructions is erroneous in matter of fact, in stating that on the 11th of November, 1850, T. Butler King had not given bond or taken the oath of office; and that therefore, the lease made by him was void.

The fact is, that prior to the 1st of November, 1850, T. Butler King had taken the oath of office before the United States district judge of the southern district of New York; had given bond which was on that day (November 1st) approved by the Comptroller of the Treasury, and his commission as collector, was on the last named day transmitted to him at New York, by mail.

On the 11th of November, ten days afterwards, he entered into the contract now in question, which was on the same day approved by the Secretary of the Treasury.

5th. It will be insisted that T. Butler King having his commission, as collector, and having given bond to the approval of the Comptroller of the Treasury, (see 1st vol. Stat., 705,) the validity of his official acts does not depend upon his having taken or not taken the oath of office.

The act of March 2, 1799, (1 vol. Stat., 641,) provides for the appointment of collectors. The 20th section requires all officers and persons appointed in pursuance of that act to take an oath of office before entering on the duties of their respective offices, and within three months thereafter to transmit a certificate thereof to the Comptroller of the Treasury; and in default of taking the oath or transmitting a certificate thereof, the party failing shall forfeit and pay two hundred dollars.

The law does not declare that the official acts of the officers shall be void in default of taking the oath, which might work great mischief to the public and to innocent parties; but the penalty is imposed on the person of the party in default.

In other words, it will be insisted, that in this case the collector acted by authority of his commission and that the requirement that he should take an oath is directory and not mandatory.—(Jones *vs.* Gibson, 1 New Hamp. Rep., 266; Johnson *vs.* Wilson, 2 New Hamp., 205-'6; Speake *vs.* United States, 3 Cond. Rep., 248.)

In Bac. Ab., title Officer and Offices, letter E, it is said: "If an officer be created by letters patent he is a complete officer before he is sworn, and before an investiture."

6th. The commission of an officer of the United States is conclusive evidence of his appointment, and it amounts to this conclusive evidence when the appointing power has done every thing to be performed by him.—(Marbury *vs.* Madison, 1 Cranch, 157, 158, and 159.)

That an officer is such *de jure*, as well as *de facto*, from the date of his commission, is established by the fact that his salary commences from that date.—(Marbury *vs.* Madison, 1 Cranch, 161.)

7th. If it be necessary that a collector should accept his appointment to constitute him an officer *de jure*, then it will be insisted that the making of this contract, or doing any other official act after the delivery of the commission to him, would in law amount to an acceptance of the office.

8th. When a person has distinctly admitted or recognized the official capacity of another, he cannot afterwards dispute the validity of the appointment; (Johnson *vs.* Wilson, 2 New Hamp., 205-'6;) consequently, the approval of the contract by the Secretary of the Treasury estops the government, as against the lessor, from denying the official character of King.

9th. It is a well-established rule, that where an officer *de facto*—that is to say, one acting under color of office, whether ministerial or judicial—performs official acts, neither the validity of the appointment nor of the acts done, so far as the community or third persons are concerned, can be disputed or denied; this can be done only where the officer himself is a party.—(Jones *vs.* Gibson, 1 New Hamp., 266; Johnson *vs.* Wilson, 2 New Hamp., 206; State of Ohio *vs.* Constable, 7 Ohio Rep., 10; State of Ohio *vs.* Alling, 12 Ohio, 20; State of Ohio *vs.* Jacob, 17 Ohio, 143; Burke *vs.* Elliot, 4 Iredell, 355; Gilman *vs.*

Reddick, 4 Iredell, 368; McKintry *vs.* Tanner, 9 Johns. Rep., 135; People *vs.* Collins, 7 Johns. Rep., 549; 7 Cowen, 402; Fowler *vs.* Bebee, 9 Mass., 231; Riddle *vs.* Bedford, 7 Sargt. & Rawle, 249; 2 Maule & Selwyn, 141; 3 Barn & Ald., 266; 10 Mass., 301.)

In the case of *Wilson vs. Johnson*, Judge Woodbury says that it is well settled that, when the irregularity, whatever it may be, is not punishable at all, or only by a penalty, the acts of the officer are still valid in respect to third persons who may be interested in such acts; they are valid, also, in respect to the public, so that justice may not fail; and, for aught we perceive, the officer himself may be protected under them; on the contrary where the irregularity is by statute expressly made to invalidate the acts of the officer, or where such is the necessary construction, considering the nature of the office and of the irregularity, the officer himself cannot justify those acts in his official capacity.

10th. Upon the general principles of law, the government, by the approval of this contract by the Secretary of the Treasury, and the payment of rent for more than two and a half years, is estopped from denying the validity of the lease, except it might be for fraud in the procurement of it, of which the government was ignorant.

That no demand of payment is necessary when the party refuses to comply with his contract.—(*Walsh vs. Ostrander*, 22 Wend., 181.)

S. F. VINTON,  
*Solicitor for Plaintiff.*

WASHINGTON CITY, *May 28th*, 1857.

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IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

Judge BLACKFORD's opinion.

This suit is for rent, and is founded on a lease of a warehouse situated in San Francisco, California. The lease is dated November 11, 1850, and is executed by one Daniel Saffarans, as lessor, and by T. Butler King, collector of the port of San Francisco, on the part of the United States, as lessee. There is an assignment of the lease by the lessor to the claimant, dated July 10, 1851, endorsed on the lease; and there is, on the face of the assignment, the following writing:

“It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon, endorse on it their approval. This 10th July, 1851.

“DAN'L SAFFARANS.”

It will be observed that the authority to the three persons named, given by said writing, is joint, and not joint and several.

There is a power of attorney of the same date with that of said writing—that is, the 10th July, 1851—to the three persons aforesaid. It is copied into the petition, and there designated as No. 9. That power of attorney authorized those three persons to deliver said assignment, and do some other things, and also to appoint a substitute. But that power, like that contained in said writing, is joint, and not joint and several.

It appears that, on the 25th of July, 1851, Crittenden, one of said three men, undertook, by a separate act, to appoint Geo. W. Guthrie as his substitute, to act for him under said power of attorney from Daniel Saffarans, authorizing said Guthrie to do all that he, Crittenden, could do under said power of attorney of Daniel Saffarans. And it appears, also, that, on the 19th of November, 1851, Sheldon undertook to appoint Isaac Saffarans (B) his attorney, to endorse his, Sheldon's, name and approval on said assignment.

There are on said assignment the following endorsements:

"State of California, county of San Francisco. The undersigned signify their approval to within transfer, by affixing hereto their seals and signatures, this fifteenth (15th) day of September, A. D. one thousand eight hundred and fifty-one.

"ROB'T H. CRITTENDEN, [SEAL.]

"By his att'y, G. W. GUTHRIE,

"ISAAC SAFFARANS, (B) [SEAL.]

"Sealed and delivered in presence of—

"WARD McALLISTER."

"The undersigned signifies his approval to within transfer, by affixing hereto his hand and seal, this twenty-sixth day of January, one thousand eight hundred and fifty-two.

"A. P. SHELDON, [SEAL.]

"Per ISAAC SAFFARANS, (B)

"*His Attorney in fact.*

"Signed, sealed, and delivered in presence—

"Witness: WARD McALLISTER."

I am of opinion that the condition to said assignment, which is written on its face, could not be complied with but by the joint act of the three persons named, or by their substitute jointly appointed by them, supposing them to have been authorized to appoint a substitute for the purpose. "It is a general rule of the common law," says Judge Story, "that where an authority is given to two or more persons to do an act, the act is valid to bind the principal only when all of them concur in doing it; for the authority is construed strictly, and the power is understood to be joint and not several."—(Story on Agency, sec. 42.)

The result of this suit depends upon a single question. That question is, has Daniel Saffaran's assignment to Cross of the lease been approved, and said endorsement of the approval made, by the joint act of R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon, or by their substitute jointly appointed by them, supposing they could appoint a substitute for the purpose? That question must be answered in the negative. There is no pretence that there has been any such joint approval or joint endorsement by those three persons or by their substitute jointly appointed by them.

There is on the lease the following endorsement:



"Honorable T. BUTLER KING,

"*Collector of the port of San Francisco:*

"SIR: Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under same to said Alexander Cross.

"I remain, &c.,

"DANIEL SAFFARANS,

"Per attorney, ISAAC SAFFARANS.

"SAN FRANCISCO, *September 15, 1851.*"

There is no evidence of the execution of that paper by Isaac Saffarans; nor is it shown that Daniel Saffarans had ever authorized Isaac Saffarans to sign any such paper or make any such request. There is among the papers a power of attorney by Daniel Saffarans to Isaac Saffarans, dated April 12, 1851, but it confers no such power as is assumed in that paper, nor is that its object. On the contrary, the authority is to collect the rents then due or to become due from the government to Daniel Saffarans; and to buy out Cross' interest in the warehouse, alleged to be twenty-seven and two-thirds hundredths of the whole. The date of this power is about five months before the date of said assignment. There is also a power of attorney by Daniel Saffarans to Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon, (No. 9, in the petition,) before noticed; but it gives no authority to Isaac Saffarans to sign any such paper as the one in question.

We have not, according to our rules, any special pleading; but I understand that the general issue is considered to be always filed to the petition; and that the claimant can, in no case, recover without proving his cause of action.

The present suit is for rent, and is founded on a lease. The claimant, who sues as assignee, does not prove himself to be the owner of the lease or of the reversion. He, of course, has no cause of action.

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IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

*January 24, 1859.*

SCARBURGH, J.

On the 28th day of April, A. D. 1849, Daniel Saffarans entered into a contract with the United States of the following tenor and effect:

Daniel Saffarans, on his part, agreed to erect and finish, in the city of San Francisco, a building of the dimensions and description therein mentioned, so that the same should be ready for occupancy on or before the 1st day of September, A. D. 1850; and to lease the building to the United States for a term commencing on the day when the collector of San Francisco should approve and accept the same, and terminating on the expiration of fifteen years thereafter. And the United States, on their part, agreed to accept a lease of the said building from Daniel



Saffarans for the term above mentioned, at a rent to be determined upon by the collector of San Francisco when he should receive the building, and be payable quarter-yearly on the first day of January, April, July, and October in every year.

This contract was entered into on the part of the United States by the collector of San Francisco, subject to the approval of the Secretary of the Treasury. It was, on the 8th day of May, A. D. 1849, approved by the Secretary of the Treasury on certain conditions, which were endorsed thereon in writing. The third condition was, that the rate of rent to be paid for the building should be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury; and the fourth was, that the rent stipulated for should depend upon and be paid out of appropriations expressly made by Congress for the purpose and from no other source, or according to the existing laws at the time of payment.

A power of attorney from Daniel Saffarans to George W. Sanders is endorsed upon the copy of the above mentioned contract on file with the papers of this case.

On the 11th day of November, A. D. 1850, another contract was entered into between the United States and Daniel Saffarans. The latter contract recited that Daniel Saffarans did, on the 28th day of April, A. D. 1849, enter into a contract with the United States for the construction of an iron-proof warehouse of the dimensions and description in the recital mentioned, to be used for custom-house purposes, at the port of San Francisco, under a lease to the United States for the term of fifteen years, and that the contract so recited was approved by the Secretary of the Treasury subject to certain conditions.

The contract of the 11th day of November, A. D. 1850, also recited that Daniel Saffarans had, in fulfilment of his contract first above mentioned, erected an iron fire-proof warehouse in San Francisco, of the dimensions and quality stipulated for therein, and that the collector of San Francisco did, on the       day of       contract with Daniel Saffarans to rent the same for the term of fifteen years at the rate of two thousand dollars *per* month, but that the Secretary of the Treasury, deeming the rate of rent for fifteen years unreasonable, had disapproved thereof. It also recited, that the United States being much in need of the iron warehouse above mentioned for custom-house purposes in San Francisco, and Saffarans being willing to make some abatement of the terms agreed on in the contract entered into with the collector of San Francisco on the       day of       , the parties had concluded the following terms:

1. The United States agreed to rent the warehouse from Saffarans for the term of ten years from the day possession should be delivered to the then collector, at a rent of *fifteen hundred dollars* a month, payable monthly by the collector of San Francisco. There were other stipulations, but it is not necessary to mention them here.

The Secretary of the Treasury appended to the contract of the 11th of November, A. D. 1850, the following: "The foregoing articles of agreement are approved upon the following express understanding and conditions—that is to say, that the collector, T. Butler King,

esq., upon his arrival at San Francisco, shall first examine the warehouse in question, and duly accept the same as being substantially of the character, description, and dimensions required by the stipulations contained in the former articles of agreement herein referred to, then this approval is to take effect, otherwise to be null and void."

On the 10th day of July, A. D. 1851, Daniel Saffarrans made and appended to a copy of the contract of the 11th day of November, A. D. 1850, an instrument of which the following is a copy:

"Having sold to Alexander Cross, for a valuable consideration, all my interests hereafter mentioned, I, Daniel Saffarans, do hereby transfer and assign the agreement, of which the foregoing instrument is in substance a copy, with all the rights, rents, and interests accrued or to accrue under or in virtue of the same, to Alexander Cross; hereby placing him to all intents and purposes in my stead as regards said agreement, as though he, instead of myself, had been the original party thereto.

"He taking all the benefits of said agreement, and all its responsibilities, and I do release, quit claim, and convey all my right, title, interest, and lien, if any, and whatever it may be, to the said Cross and his heirs forever.

"The said Cross is hereby entitled and authorized to receive all the rent that has accrued, and is now in arrear, or that may hereafter accrue under said agreement for the house therein mentioned and alluded.

"In testimony whereof I have hereunto set my hand and seal, this tenth day of July, eighteen hundred and fifty-one.

"DAN'L SAFFARANS. [SEAL.]

"Signed, sealed, and acknowledged in presence of the undersigned witnesses:

"H. M. LUSHER.

"C. G. LEONARD.

"JAMES ROSE, JR."

Upon this instrument Saffarrans made the following endorsement:

"It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon endorse on it their approval, this 10th July, 1851.

"DAN'L SAFFARANS."

On the 15th day of September, A. D. 1851, G. W. Guthrie, professing to act as the attorney of Robert H. Crittenden, and Isaac Saffarans, (B,) made and endorsed upon the instrument last above mentioned (the assignment from Saffarans to Cross) the following:

"The undersigned signify their approval to within transfer, by affixing hereto their seals and signatures, this fifteenth (15th) day of September, A. D. one thousand eight hundred and fifty-one.

"ROBERT H. CRITTENDEN, [SEAL.]

"By his attorney, G. W. GUTHRIE.

"ISAAC SAFFARANS, (B.) [SEAL.]

"Sealed and delivered in presence of—

"WARD McALLISTER."

On the 26th day of January, A. D. 1852, Isaac Saffarans, (B,) professing to act as the attorney in fact of A. P. Sheldon, made and endorsed upon the above mentioned assignment from Saffarans to Cross, the following:

"The undersigned signifies his approval to within transfer, by affixing hereto his hand and seal, this twenty-sixth day of January, one thousand eight hundred and fifty-two.

"A. P. SHELDON, [SEAL.]  
 "Per ISAAC SAFFARANS, (B,) *"His attorney in fact."*

"Signed, sealed, and delivered in presence—witness:

"WARD McALLISTER."

On the 10th day of July, A. D. 1851, Daniel Saffarans gave Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon a power of attorney, of which the following is a copy:

"Know all men by these presents, that I, Daniel Saffarans, of the town of Memphis, in the State of Tennessee, do hereby nominate, constitute, and appoint Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon, my true and lawful attorneys in fact, for me and in my name to deliver to Alexander Cross, of San Francisco, in California, my assignment to said Cross of all my right, title, and interest in and to an iron warehouse in San Francisco, together with all rents accrued or to accrue on the same, as are more particularly set forth in my said assignment, bearing date of the 10th day of July, 1851, and attached to a certified copy of my contract of 11th November, 1850, with T. Butler King, collector of San Francisco, for the rent of said houses, &c.

"And my said attorneys are also hereby fully authorized and empowered to receipt for and receive from said Cross all money, bonds, or notes stipulated to be received by me as the consideration for said assignment, and to take from said Cross a release of all responsibility on my part, arising out of any and all contracts heretofore made between us in relation to the building or renting of said house.

"And my said attorneys are also hereby fully authorized and empowered, if any objection is made to the form of my said assignment or its mode of authentication, to alter or amend the same at their discretion, or in fact to make any new or other assignment for me.

"And my said attorneys are also hereby fully empowered and authorized to substitute another attorney in their places, with the same full powers in the premises as are hereby conferred on them, hereby binding and obliging myself to ratify and confirm whatever my said attorneys or their substitute may do in the premises, and making their acts as binding on me as if done by myself.

"In testimony whereof I have hereunto set my hand and seal this 10th day of July, 1851.

"DAN'L SAFFARANS. [SEAL.]

"Signed, sealed, and delivered in presence of the undersigned witnesses:

"H. M. LUSHER.

"C. G. LEONARD.

"JAMES ROSE, Jr."

On the 25th day of July, A. D. 1851, R. H. Crittenden gave to George W. Guthrie a power of attorney, of which the following is a copy :

“NEW YORK, *July 25, 1851.*

“Know all men by these presents, that I, R. H. Crittenden, of Frankfort, Kentucky, do hereby nominate, constitute, and appoint George W. Guthrie, of the city of San Francisco, California, my true and lawful attorney in fact to act for me under the foregoing joint power of attorney from Daniel Saffarans to Isaac Saffarans, A. P. Sheldon, and myself, with power of substitution ; hereby authorizing the said Guthrie to exercise all the rights and powers which I myself could do under the said power of attorney from Daniel Saffarans ; binding myself to approve whatever the said Guthrie may do in the premises, making his acts as binding as if done by me.

“Witness my hand and seal

“R. H. CRITTENDEN. [L. s.]

“Signed and sealed in presence of—

“JAMES ELDREDGE.

“GEORGE N. SANDERS.”

The last two powers of attorney were written on the same sheet of paper.

On the 19th day of November, A. D. 1851, A. P. Sheldon gave Isaac Saffarans (B) a power of attorney, of which the following is a copy :

“Know all men by these presents, that I, A. P. Sheldon, of Sumner county, in the State of Tennessee, recently of San Francisco, in the State of California, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint Isaac Saffarans, (B,) of San Francisco, aforesaid, my true and lawful attorney in fact, for me and in my name and stead to endorse my name and approval upon a certain deed of conveyance, executed by Daniel Saffarans, of Shelby county, Tennessee, to Alexander Cross, of England, now in San Francisco, about the month of June, 1851, whereby the said Daniel Saffarans conveyed to the said Cross an iron fire-proof warehouse of four stories, erected by said Cross in the city of San Francisco aforesaid, which said warehouse is now occupied by the government of the United States, under a lease from the said Daniel Saffarans, for custom-house purposes, it being now impracticable for me, in the absence of papers relating to the same, to describe the property conveyed by said deed with more minuteness and precision, which said deed was sent to California by the said Daniel Saffarans as an *escrow* to take effect as a deed upon condition that the same should be approved and endorsed by Robert Crittenden, the said Isaac Saffarans, (B,) and myself, and the same has been approved and endorsed by the said Robert Crittenden, by George Guthrie, his attorney in fact, and by the said Isaac Saffarans, (B,) and would have been approved and endorsed by myself, in person, had I not left California before the said deed arrived there.

“And I hereby engage to ratify and confirm the approval and en-

dorsement of the said deed by my said attorney in fact, as fully and amply as though the same were done by myself in proper person.

"In testimony whereof I have hereunto set my hand and affixed my seal, this 19th day of November, in the year of our Lord one thousand eight hundred and fifty-one

"A. P. SHELDON. [L. s.]"

On the 12th day of April, A. D. 1851, Daniel Saffarans gave Isaac Saffarans, (B,) power of attorney, of which the following is a copy :

"Know all men by these presents, that I, Daniel Saffarans, of the county of Shelby, and State of Tennessee, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint my son, Isaac Saffarans, (B,) now of San Francisco, in the State of California, my true and lawful attorney in fact, for me and in my name to demand, collect, and receive all moneys due to me, or hereafter to become due to me in the State of California, and particularly to demand and receive from the collector of the customs at the port of San Francisco, or any other proper officer whose duty it may be to pay the same, all moneys now due or hereafter to become due to me from the government of the United States of America, for the rent of an iron warehouse in San Francisco, under a contract made by me with the said government, and full receipts and acquittances for all such moneys to execute in my name.

"And I do also hereby further authorize and empower my said attorney in fact, for me and in my name to purchase from Alexander Cross all his interest in an iron warehouse in San Francisco, erected by said Cross under a contract with me; the extent of said interest being twenty-seven and two-thirds one hundredths ( $\frac{27\frac{2}{3}}{100}$ ) of the whole, and to pay to said Cross whatever may be due to him from me on account of advances made by him for me towards the purchase of the lot on which the said warehouse is erected, and the erection of said warehouse; and if it shall be necessary to raise money for the purpose of making the said purchase and payment, I hereby authorize my said attorney in fact to raise the same by a loan, to any amount not exceeding ninety thousand dollars, (\$90,000,) and to secure the repayment thereof by an assignment of the rents of the said warehouse hereafter to become due from the government of the United States, in such manner as may be agreed on by the party or parties loaning the money and my said attorney in fact, to whose discretion I confide all the details of the necessary arrangements respecting the security to be given for said loan; and I hereby engage to ratify and confirm all the acts and things that may be done by my said attorney in fact in the premises pursuant to this power of attorney, in as full and ample a manner as though the same were done by myself in proper person.

"Given under my hand and seal this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

"DANIEL SAFFARANS. [L. s.]"

On the 15th day of September, A. D. 1851, Isaac Saffarans, (B,) professing to act as attorney for Daniel Saffarans, endorsed upon the above mentioned copy of the contract of the 11th day of November,



A. D. 1850, between the United States and Daniel Saffarans, as follows :

“SAN FRANCISCO, *September 15, 1851.*

“SIR : Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under same to said Alexander Cross.

“I am, very respectfully, sir, your obedient servant,

“DANIEL SAFFARANS,

“Per attorney, ISAAC SAFFARANS, (B.)

“HON. T. BUTLER KING,

“*Collector of the port of San Francisco.*”

T. Butler King, as collector of the port of San Francisco, made, upon the last mentioned copy of the contract of the 11th day of November, A. D. 1850, the following endorsement :

“I, as collector of the port of San Francisco, do hereby accept the iron warehouse erected by Alexander Cross upon a part of the water lot, No. 49, on Battery street, now in the occupation of the United States government as a bonded warehouse, as the warehouse contracted to be built by Daniel Saffarans, as provided in a contract of which the within is a copy. And I do hereby officially recognize said Cross as landlord, it being understood that I am to incur no individual responsibility in the premises. This acceptance to date as if done 14th January, 1851.

“T. BUTLER KING,

“*Collector of the Port of San Francisco.*”

The Secretary of the Treasury, in a letter dated April 12, A. D. 1853, addressed to R. P. Hammond, esq., collector of San Francisco, said : “The agreement between Daniel Saffarans and James Collier, under date of the 28th of April, 1849, appears to have been made in Hamilton county, Ohio, for the building by Saffarans of a fire-proof building at San Francisco, on a site to be selected by said Collier, and the lease of it for fifteen years, at a rent of \$ , which contract was approved by Wm. M. Meredith, Secretary of the Treasury, on condition that the rate of rent to be paid for the building should be agreed upon by the collector and approved by the Secretary, and the rent stipulated for to depend upon and to be paid out of appropriations expressly made by Congress for the purpose and from no other source, or according to existing laws at the time of payment.

“The supplemental agreement to give effect to the proceeding, under date of the 11th November, 1850, between T. Butler King, and Daniel Saffarans, recites the building was completed, that the collector, King, had contracted to rent said warehouse for fifteen years, at \$2,000 *per month* ; that the contract was sent to Washington, and Thomas Corwin disapproved the rent at \$2,000 *per month*. On the 11th November, 1850, it appears the rent was fixed at \$1,800 [1,500?] *per month*, for ten years from taking possession, between the owners and T. Butler King.

“T. Butler King was appointed collector on the 14th October, 1850,



and the law requires he should, before entering on his duties, take the oath of office in his collection district. He was in Washington at the time of his appointment, and had not on the 11th November, 1850, given bond or taken the oath of office, and was consequently not collector. He was in the same condition when the supposed agreement for a rent of \$2,000 *per* month was made.

“The law requires the sworn collector to make these contracts, and he must be sworn in the district, and he ought to see the houses he rents, and know the value of the rent by actual personal knowledge. He was not a collector when the rent was fixed at \$1,500 *per* month, and was not in the district, and had not the knowledge, and could not know the value of the property or its adaptation to the public use. This pretended lease is not binding on the United States.

\* \* \* \* \*

“The collector will abandon the premises mentioned in the agreement with \* \* \* \* and that with Daniel Saffarans, and notify the lessors respectively that rent will no longer be paid for said buildings, and that said pretended leases are held void.”

T. Butler King took the oath of office as collector of the district of San Francisco on the 31st day of October, A. D. 1850, before Hon. Sam. R. Betts, United States judge for the southern district of New York.

E. C. Seaman, acting comptroller, in a letter to T. Butler King, dated November 1, A. D. 1850, said: “Your official bond having been received and approved, your commission as collector is herewith transmitted. Inasmuch as there is question about the legality of your oath of office endorsed thereon, taken before the judge of the district court for the southern district of New York, you are hereby required, before entering upon the duties of your office, to take another oath of office within the collection district before some judge or magistrate authorized to administer oaths therein, and have the official character and signature of such officer duly certified by the clerk of a court of record of the proper county under his seal of office, in accordance with the form of oath and certificate, and the instructions at the bottom of the blank bond herein enclosed and you will please to transmit the same, so certified, forthwith to this office.”

On the 8th day of January, A. D. 1851, T. Butler King, collector of the district of San Francisco, took the oath of his office within his district before a judge of the 4th district court in the State of California.

The Secretary of the Treasury, in his letter to the collector of San Francisco, dated April 12, A. D. 1853, omitted to notice the joint resolution of February 14, A. D. 1850. This resolution expressly provides, “That the Secretary of the Treasury shall be authorized to dispose of the bonded warehouses now leased by government, on or before the first of January next, on the best practicable terms for the government; but he may retain such parts of said houses, *or lease such other houses*, at his discretion, as may be necessary for the storage of unclaimed goods, or goods which for any other reason are required by law to be stored by the government.”—(9 Stat. at Lar., pp. 560-1.

See the opinion of this court in the case of Theodore Adams *vs.* The United States.)

In pursuance of the instructions above mentioned, the collector of San Francisco gave notice to the petitioner in writing, as follows:

“CUSTOM-HOUSE, SAN FRANCISCO,  
“*Collector's Office, August 4, 1853.*

“SIR: I have the honor to inform you, that in obedience to instructions which I have received from the Secretary of the Treasury, under date of April 12, 1853, that ‘the pretended lease’ under which the warehouse belonging to you on Battery street has been occupied for the storage of goods by the United States, ‘is not binding on the United States,’ and that I am to abandon that building; I shall on the 13th instant give up the possession of the said store, and not pay any rent for it after that date.

“Respectfully, your obedient servant,  
“RICHARD P. HAMMOND,  
“*Collector.*

“ALEXANDER CROSS, Esq.”

The petitioner replied to this notice as follows:

“SAN FRANCISCO, *August 13, 1853.*

“SIR: I have to acknowledge the receipt of a letter from you, under date August 4th, apprising me that in obedience to instructions from the Secretary of the Treasury, you will on the 13th instant give up the possession of my warehouse on Battery street, and not pay any rent for it after that date.

“I do not recognize a right in the Secretary of the Treasury to rescind my contract with the government in reference to said warehouse, and I shall therefore claim payment of rent pursuant to said contract until the expiration of the term for which the building was leased.

“Respectfully, your obedient servant,  
“ALEX. CROSS.

“RICHARD P. HAMMOND, Esq.,  
“*Collector of Customs.*”

On the 15th day of August, A. D. 1853, the collector gave notice to the Secretary of the Treasury as follows:

“CUSTOM-HOUSE, SAN FRANCISCO,  
“*Collector's Office, August 15, 1853.*

“SIR: I have the honor to inform you that I have, in obedience to your instructions dated April 12th, 1853, abandoned the store leased from Daniel Saffarans, and transmit herewith a copy of the notice served upon Mr. Cross the assignee of Saffarans. The bonded merchandise which was stored in that warehouse has been transferred to a store of brick, fire-proof, which has been bonded by Messrs. Hall & Co., on the corner of Green and Battery streets. The unclaimed

merchandise has been removed to Eldridge's stores, corner of Union street. That which has been in store over nine months will be sold at auction on the 22d instant.

"I have the honor to be, very respectfully, your obedient servant,  
"RICHARD P. HAMMOND,  
"Collector.

"Hon. JAMES GUTHRIE,  
"Secretary of the Treasury, Washington."

From the 13th day of August till the 1st day of September, A. D. 1853, the warehouse in question was unoccupied. From the 1st day of September, A. D. 1853, till the 1st day of September, A. D. 1854, it was occupied by Francisco Salvador Alvarez, to whom it was leased at the rent of seven hundred and fifty dollars a month. From the 1st day of September, A. D. 1854, to the 10th day of August, A. D. 1855, Cross & Co. received goods therein on storage, at rates specified in an account appended to the deposition of Henry Lund. From the 10th day of August, A. D. 1855, till the early part of the year 1857, J. J. Southgate & Co. occupied about three-fourths of the first floor, at a rent of *one hundred dollars* a month; and Cross & Co. received goods in the rest of the building on storage, at rates specified in the account already mentioned, appended to the deposition of Henry Lund.

The rent received from F. S. Alvarez amounted to the sum of *nine thousand dollars*. The rent received from J. J. Southgate & Co. to the 10th of November, A. D. 1856, amounted to the sum of *fifteen hundred dollars*. Cross & Co. received for storage up to and inclusive of the 14th day of November, A. D. 1856, the sum of *six thousand one hundred and twenty-one dollars and seventeen cents*; and incurred expenses in receiving and delivering to the amount of *nine hundred and forty-five dollars*, leaving the "amount of net storage" the sum of *five thousand one hundred and seventy-six dollars*.

The petitioner now claims as follows:

For rent of the above mentioned iron warehouse, from the 13th day of August, A. D. 1853, to the 14th day of November, A. D. 1856, 39 months, at \$1,500 a month.....

\$58,500 00

He offers to give the United States credit as follows:

For the money received from F. S. Alvarez.....  
For the money received from J. J. Southgate & Co.....  
For the money received for storage.....

\$9,000 00

1,500 00

5,176 00

15,676 17

After deducting therefrom a commission of five per cent.

783 80

Net amount to be credited.....

14,892 37

Balance now claimed.....

43,607 63

58,500 00

The petitioner claims the above balance of *forty-three thousand six hundred and seven dollars and sixty-three cents*, with interest thereon at the rate of six per centum per annum.

I am of the opinion that the lease from Daniel Saffarans to the United States is valid as a lease to them of the warehouse for ten years, at the rent of *fifteen hundred dollars* a month, payable monthly; and that the United States are liable and bound to pay, to whomsoever may be legally entitled thereto, the rent from the 13th day of August, A. D. 1853, till the 13th day of January, A. D. 1861, when the term will expire, subject to a deduction for such profits as have been or may be reasonably realized therefrom.

I am also of the opinion that it was not incumbent upon the petitioner to take possession of the warehouse when it was abandoned by the United States, or to take any steps thereafter to make it in any way available during the term for which it was leased. But as he has done so, he is, under the circumstances, responsible to the United States only for such profits as he may have reasonably realized therefrom. I think, too, that the claim of a commission of five per centum upon the amount received for rents and storage is reasonable and just.

But since the first hearing of this case a doubt has arisen in regard to the sufficiency of the proof of the title of the petitioner as assignee of Daniel Saffarans; and that question has again been argued before us; the petitioner, by his counsel, stating that he can offer no further evidence. Upon consideration of the whole evidence on this point, I am of the opinion that the petitioner's title is not sufficiently shown.

Before the former hearing of this case, the solicitor for the United States and the counsel for the petitioner filed in this case the following paper:

“IN THE COURT OF CLAIMS.

“ALEXANDER CROSS *vs.* THE UNITED STATES.

“It is agreed that the paper marked thus, (Paper No. 1,) and put on file in this case, is a true copy of the original article of agreement between Daniel Saffarans, of the first part, and the United States of America, by James Collier, collector of the district of San Francisco, California, of the second part, and of the approval of said agreement by W. M. Meredith, Secretary of the Treasury.

“That the paper marked thus, (Paper No. 2,) and also put on file in this case, contains true copies of the originals of the following enumerated papers, to wit:

“1st. A copy of the article of agreement of the 11th of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States government, of the first part, and Daniel Saffarans, of the second part.

“2d. A copy of the approval of the last named article of agreement by Thomas Corwin, Secretary of the Treasury, endorsed on said original article of agreement.

“3d. A copy of the assignment of said last named article of agree-

ment by said Daniel Saffarans to Alexander Cross, the plaintiff in this case.

"4th. A copy of the approval of said assignment by R. W. Crittenden, A. P. Sheldon, and Isaac Saffarans, (B,) as the attorneys of said Daniel Saffarans, endorsed on said agreement.

"5th. A copy of a letter of said Daniel Saffarans by his attorney, Isaac Saffarans, (B,) of the date of the 15th of September, 1851, addressed to T. Butler King, collector of the port of San Francisco, notifying him that said article of agreement of the 10th of November, 1850, had been assigned to said Alexander Cross, and requesting him to pay all back and future rents to said Cross.

"6th. A copy of the acceptance by said T. Butler King, as collector of the port of San Francisco, of the iron warehouse named in said article of the 11th of November, A. D. 1850, and of his official recognition of said Alexander Cross as the landlord to whom the rents of said warehouse were to be paid.

"It is agreed that the paper marked thus, (Paper No. 3,) and also put on file in this case, is the original letter of Richard P. Hammond, collector of San Francisco, to Alexander Cross, notifying him that, in pursuance to instructions from the Secretary of the Treasury, he should, on the 13th of August, 1853, abandon said warehouse, and stop the payment of rent from that date.

"Signed—

"M. BLAIR,

*"Solicitor United States.*

"S. F. VINTON,

*"For Alexander Cross.*

"JUNE 4, 1857."

On the paper containing the power of attorney from Daniel Saffarans to Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon, and the power of attorney from R. H. Crittenden to George W. Guthrie, the solicitor made the following endorsement: "I waive all objection to the admissibility of this paper in evidence." Signed "M. Blair, solicitor," and dated "Washington, June 4, 1857."

On the power of attorney from A. P. Sheldon to Isaac Saffarans, (B,) the solicitor made the following endorsement: "I waive all objection to the admissibility of this paper in evidence." Signed "M. Blair, solicitor," and dated "Washington, June 4, 1857."

On the power of attorney from Daniel Saffarans to Isaac Saffarans, (B,) the solicitor made the following endorsement: "I waive objection to the admissibility of this paper in evidence." Signed "M. Blair, solicitor," and dated "June 4, 1857."

All the papers above mentioned were read by the petitioner's counsel in evidence, without any objection being made by the solicitor for the United States.

I understand the above mentioned agreement between the solicitor of the United States and the counsel for the petitioner, and the several endorsements above mentioned made by the solicitor of the United States, as *solemn admissions*, the object of which was to dispense with the necessity of producing the originals, where copies only are filed,



and of proving the due execution of any of the originals. I am therefore of the opinion that we are bound to treat the above copies as originals, and to consider the execution of all the originals as *solemnly admitted*.

In the above agreement of counsel, as it was originally drawn, at the conclusion of the sixth enumeration, after the word "paid," there was added as follows: "and it is agreed that no further proof will be required of said assignment of said article of agreement of said 11th of November, 1850, and of the recognition of said Cross as the landlord to whom rent was to be paid by the United States." This was stricken out by drawing the pen across it; the object plainly being to avoid an admission of a mere conclusion of law; for whether the papers above mentioned, as understood by me, do or do not prove the assignment from Saffarans to Cross is merely a conclusion of law.

But it is plain, I think, that those papers do not show a valid assignment from Daniel Saffarans to the petitioner. Isaac Saffarans alone, in proper person, endorsed his approval on the assignment. George W. Guthrie, professing to act as the attorney in fact of Robert H. Crittenden, undertook to endorse the approval of the latter thereon; but he was not duly authorized to do so. The power of attorney under which he acted was invalid. It purported to confer on him the powers conferred on R. H. Crittenden by the power of attorney from Daniel Saffarans to Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon. But the latter power of attorney conferred on those three persons a joint and not a several power; and the power of substitution therein contained was a joint and not a several power. The three jointly had the power to appoint a substitute, but no one of them had such power separately. The power of attorney, therefore, from Robert H. Crittenden to George W. Guthrie was invalid; it gave no power to Guthrie to act in the premises; hence, there was no approval by Crittenden, Isaac Saffarans, and A. P. Sheldon of the assignment from Daniel Saffarans to the petitioner; and according to the express stipulation between the parties that assignment is not to be valid until such approval is endorsed thereon.

I am therefore of the opinion that the petitioner has not shown a title to relief.

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IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

LORING, Judge.

I concur in the opinion that has just been read in all respects, except that I think the petitioner's legal title is defective in this—

He claims under an assignment of the lease, and has put in evidence the deed of assignment itself. It requires expressly that the approval of R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon, should be endorsed upon it, as a condition precedent to its validity as a deed.

The approval by Crittenden is not shown. An approval is signed by his attorney, G. W. Guthrie; but the power of attorney from



Crittenden, under which Guthrie acted, only purported to substitute him for Crittenden in another power of attorney, made by Daniel Saffarans to R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon; and this power of attorney does not provide for, include, or refer to the approval of the assignment, but relates exclusively to other and different matters, and a substitution of Guthrie for Crittenden, under this power, could authorize Guthrie to act only in those matters to which the power of attorney referred.

The approval by Crittenden was provided for in a separate writing, and from its nature, as a matter of personal truth and confidence, he could not delegate it to an attorney, and there is no instrument of his in the case that even purports to do so or shows any such intent. The approval, therefore, signed by Guthrie, as Crittenden's attorney, is unauthorized and a mere nullity, of no legal effect for any purpose.

Then a legal approval by Sheldon cannot be inferred from the delivery of the assignment by Guthrie as Sheldon's attorney, because Sheldon's approval is required to be endorsed, and therefore *express*; and an approval merely inferred from anything, and not endorsed, would be legally insufficient. The requirement of the endorsement is the same as that of the approval; one is as material as the other, and both are absolutely essential to the validity of the deed.

As the petitioner has put in evidence the deed of assignment itself, the positive proof that it was not legally executed excludes all inference to the contrary from the facts of the case, and consequently his title to the relief he prays for is not made out.